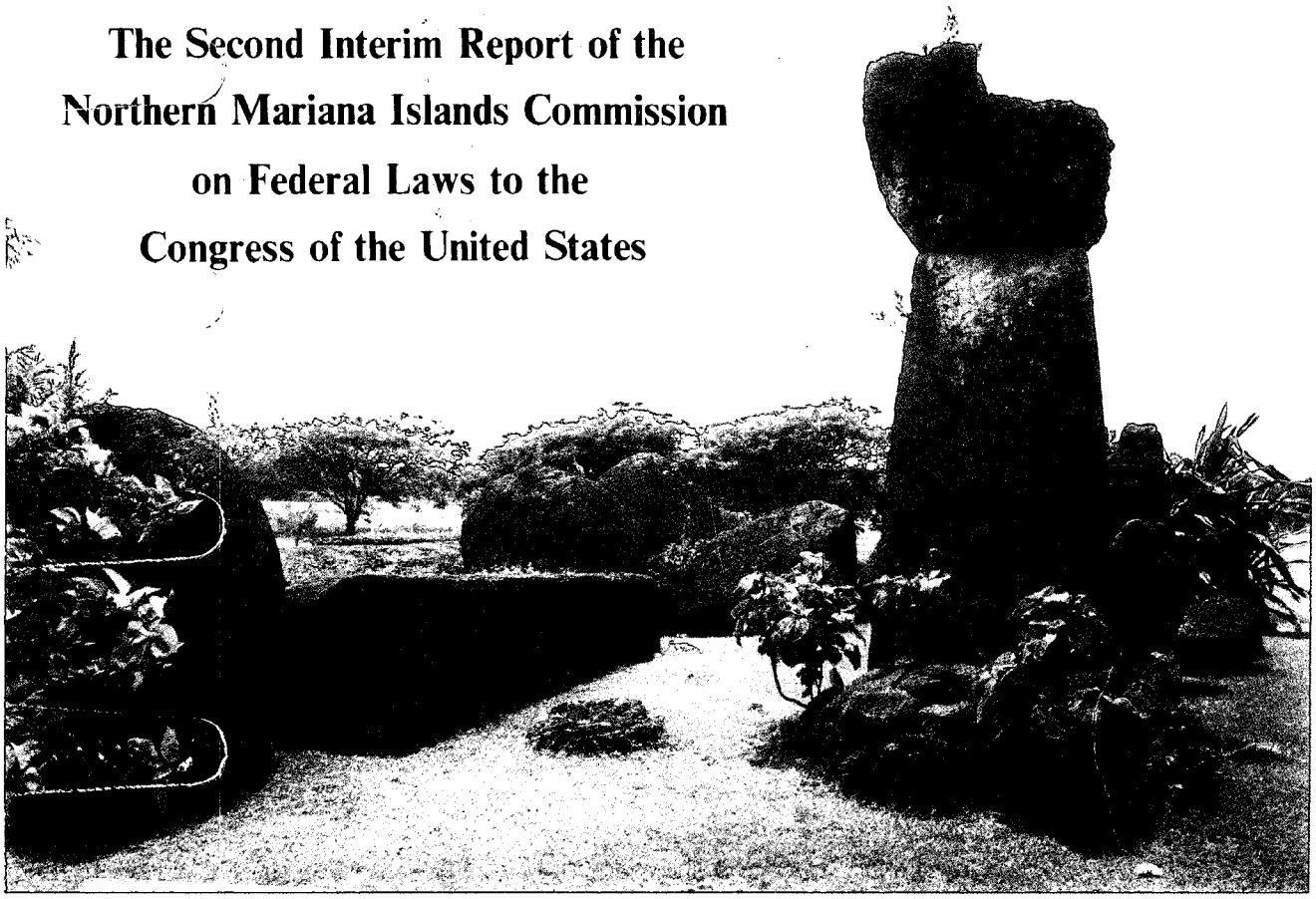
WELCOMING AMERICA'S NEWEST COMMONWEALTH

The Second Interim Report of the Northern Mariana Islands Commission on Federal Laws to the Congress of the United States



August 1985

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OF

THE NORTHERN MARIANA ISLANDS COMMISSION ON FEDERAL LAWS

Benigno R. Fitial, Chairman*
Member, House of Representatives,
Northern Mariana Islands Commonwealth Legislature
Saipan, Northern Mariana Islands

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Lieutenant Governor,
Commonwealth of the Northern Mariana Islands
Saipan, Northern Mariana Islands

Joel J. Bergsma**
Chief Counsel, House of Representatives,
Northern Mariana Islands Commonwealth Legislature
Saipan, Northern Mariana Islands

Jesus C. Borja
Attorney at Law, Borja, Mitchell, and Salas
Saipan, Northern Mariana Islands

Dewey L. Falcone***
Attorney at Law, Falcone and Falcone
Los Angeles, California

Robert J. Lagomarsino†
Member, United States House of Representatives
Ventura, California

Edward DLG. Pangelinan
Attorney at Law; Legislative Assistant to
Congressman Ben Blaz, United States House of Representatives
Saipan, Northern Mariana Islands and Olney, Maryland

* * *

* Replaced James A. Joseph on February 19, 1985.
** Replaced Agnes M. McPhetres on February 19, 1985.
*** Replaced Myron B. Thompson on February 19, 1985.
† Replaced the late Congressman Philip Burton on March 9, 1984.

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August 1985

Northern Mariana Islands Commission on Federal Laws **Washington, D.C. 20240** **(202) 343-5617**

The Honorable George Bush
President of the Senate
Room S-212
The Capitol
Washington, D.C. 20510

Dear Mr. President:

I have the honor of submitting to you the second interim report of the Northern Mariana Islands Commission on Federal Laws. The Commission, appointed by the President pursuant to section 504 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (approved by Public Law 94-241, 90 Stat. 263, March 24, 1976), is instructed "to survey the laws of the United States and to make recommendations to the United States Congress as to which laws of the United States not applicable to the Northern Mariana Islands should be made applicable and to what extent and in what manner, and which applicable laws should be made inapplicable and to what extent and in what manner."

The Commission is required to make its final report and recommendations to Congress within one year after termination of the Trusteeship Agreement pursuant to which the United States now administers the Northern Mariana Islands. Before that time, the Commission is authorized to "make such interim reports and recommendations to the Congress as it considers appropriate to facilitate the transition of the Northern Mariana Islands to its new political status."

The enclosed second interim report of the Commission is comprehensive and for all practical purposes may be the final report of the Commission. The date the Trusteeship Agreement will be terminated is not now known, however, and developments between now and that date may make desirable submission of further recommendations to Congress by the Commission. Accordingly, even though the Commission's staff will be disbanded after submission of this report, the report is labelled as interim rather than final.

Legislation to implement the Commission's recommendations is incorporated within the report. The Commission urges the Congress to enact this legislation at its earliest opportunity.

Sincerely,

Benigno R. Fitial

Northern Mariana Islands Commission on Federal Laws Washington, D.C. 20240 (202) 343-5617

The Honorable Thomas P. O'Neill, Jr.
Speaker of the House of Representatives
Room H-204
The Capitol
Washington, D.C. 20515

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Benigno R. Fitial

WELCOMING AMERICA'S NEWEST COMMONWEALTH

The Second Interim Report of the

Northern Mariana Islands Commission

on Federal Laws to the

Congress of the United States

Preface

The Northern Mariana Islands is the first significant acquisition of territory by the United States since the Virgin Islands were purchased just before the United States entered World War I, more than sixty-eight years ago. More important, the Northern Mariana Islands is the first territory to become a part of the American political family, not by purchase or conquest, but by negotiation between its own representatives and representatives of the United States followed by the subsequent popular vote of its inhabitants. The results of those negotiations are embodied in the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America. The Covenant was approved by 78.8 percent of the people of the Northern Mariana Islands voting in a 1975 plebiscite and, in 1976, was approved by the Congress of the United States in Public Law 94-241.

The Spanish, Germans, and Japanese successively ruled the Northern Mariana Islands until the United States, in bloody World War II battles at Saipan and Tinian, wrested the islands from the Japanese. Since 1947 the Northern Mariana Islands has been administered by the United States as part of the Trust Territory of the Pacific Islands, a United Nations trusteeship. During the trusteeship period, the United States has had the power to apply federal laws in the Northern Mariana Islands, but has done so only to a limited extent. The negotiators of the Covenant, however, intended that the Northern Mariana Islands be brought into a closer relationship with the United States than existed under the trusteeship and, accordingly, that more federal laws apply in the Northern Mariana Islands.

The negotiators were unable to examine each federal law to determine the wisdom of applying it to the Northern Mariana Islands. Instead, they addressed in the Covenant only the applicability of the federal laws most central to definition of the new political relationship. Even with those laws, only general principles were established; the detailed provisions were left for later examination. For other federal laws, a rule of thumb was established: laws applicable to nearby Guam should also apply in the Northern Mariana Islands, at least for the time being.

To examine in greater detail the wisdom of applying or not applying specific provisions of federal law to the Northern Mariana Islands, the negotiators provided in the Covenant for the establishment of this Commission. Earlier commissions had reported to Congress on appropriate legal regimes for the newly-acquired Territory of Hawaii (1898) and for American Samoa (1931). Other commissions reported to Congress in the 1950s on the applicability of federal law to Guam and the Virgin Islands. This report thus

continues a tradition of examining closely the application of federal laws to those parts of the American political family that for reasons of size, distance, or cultural tradition are not full participants in our political processes.

In identifying specific problems of applying federal law to the Northern Mariana Islands and in formulating alternative solutions to those problems, the Commission received advice and assistance from a large number of individuals and organizations, both governmental and private. The Commission would like to note in particular some of the most helpful.

Several congressional committee staff members followed the work of the Commission throughout its life and made many contributions to its work. Deserving of particular mention are James P. Beirne, of the staff of the Senate Committee on Energy and Natural Resources, and Patricia A. Krause, Jeffrey Farrow, and Thomas S. Dunmire, of the staff of the House Committee on Interior and Insular Affairs.

Officials in many different federal agencies also willingly provided expert advice to the Commission's staff. Especially useful were the comments and suggestions of Ruth Van Cleve, former Director of the Office of Territories in the Department of the Interior and now with the Office of the Solicitor in that agency, and of Herman Marcuse, of the Office of Legal Counsel in the Department of Justice.

Substantial assistance to the Commission in its work was also provided by members of the executive branch of the government of the Northern Mariana Islands under the successive administrations of Governor Carlos Camacho and Governor Pedro P. Tenorio; by the leaders, members, and staff of the Legislature of the Northern Mariana Islands; and by members of the bar and the business community in the Northern Mariana Islands.

The staff of the Office of the Representative to the United States for the Commonwealth of the Northern Mariana Islands, under the direction of, first, Commission member Edward DLG. Pangelinan and, then, Froilan C. Tenorio, was of great help in bringing to the Commission's attention particular problems in applying federal laws to the Northern Mariana Islands and in discussing alternative solutions to those problems.

The Commission also wishes to acknowledge the administrative support provided by the Office of Territorial and International Affairs in the United States Department of Interior, under the successive leadership of Wallace Green, Pedro Sanjuan, and Richard Montoya. In particular, the Commission would like to acknowledge the administrative assistance provided by Odessa Mitchell, Angela Clements, and Del Sines of that office.

Over the years, the interests of the territories from time to time have been advanced and protected in Congress by various Senators and Representatives, none of whom stood to gain with his or her own constituency from efforts expended on behalf of the territories. None was more able and effective in this task than the late Congressman Phillip Burton, of San Francisco, California. Congressman Burton, as chairman of the House Subcommittee on Territorial and Insular Affairs, was a prominent behind-the-scenes negotiator of the Covenant that brought the Northern Mariana Islands into the American political family and was instrumental in securing congressional approval of the Covenant. From the beginnings of this Commission's work until his untimely passing, Congressman Burton was a member of the Commission and an active and highly esteemed participant in its work. The Commission dedicates this report to his memory.

Benigno R. Fitial
Chairman

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TO

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EXECUTIVE SUMMARY

The Northern Mariana Islands.

The Northern Mariana Islands is a chain of fourteen islands located in the western Pacific Ocean near Guam. Since 1947 the islands, as part of the Trust Territory of the Pacific Islands, have been administered by the United States under a trusteeship agreement with the United Nations.

In the early 1970s representatives of the United States and of the Northern Mariana Islands negotiated a new political status for the Northern Mariana Islands. The new arrangement was described in the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America. The Covenant was approved by 78.8 percent of the people of the Northern Mariana Islands voting in a 1975 plebiscite. In 1976 the Covenant was approved by the United States in Public Law 94-241, 90 Stat. 263.

The Commission.

Section 504 of the Covenant authorizes the President of the United States to appoint a commission "to survey the laws of the United States and to make recommendations to the United States Congress as to which laws of the United States not applicable to the Northern Mariana Islands should be made applicable and to what extent and in what manner, and which applicable laws should be made inapplicable and to what extent and in what manner."

Commission members were appointed in early 1980. The original members were James A. Joseph, former Under Secretary of the United States Department of the Interior, now President and Chief Executive Officer of the Council on Foundations, Washington, D.C., who first chaired the Commission; Pedro A. Tenorio, Lieutenant Governor of the Northern Mariana Islands, Saipan, Northern Mariana Islands, who is Vice Chair of the Commission; Jesus C. Borja, Esq., private attorney, Saipan, Northern Mariana Islands; Agnes Manglona McPhetres, President of the Northern Marianas College, Saipan, Northern Mariana Islands;

Edward DLG. Pangelinan, Esq., former Representative to the United States for the Commonwealth of the Northern Mariana Islands, now legislative assistant to the Delegate from Guam to the United States House of Representatives, Saipan, Northern Mariana Islands, and Olney, Maryland; and Myron B. Thompson, Trustee, Kamehameha Schools, Honolulu, Hawaii. Until his death on April 10, 1983, the Honorable Phillip Burton, Member of the United States House of Representatives from San Francisco, California, was a member of the Commission. In March 1984 the Honorable Robert J. Lagomarsino, Member of the United States House of Representatives from Ventura, California, was appointed to the Commission to fill the vacancy created by Congressman Burton's death. In February 1985, Benigno R. Fitial, Member and former Speaker of the House of Representatives of the Northern Mariana Islands Legislature, was appointed to the Commission to replace James A. Joseph and was designated Chairman of the Commission. At the same time, Joel J. Bergsma, Chief Legal Counsel to the House of Representatives of the Northern Mariana Islands Legislature was appointed to the Commission to replace Agnes M. McPhetres, and Dewey L. Falcone, private attorney, Los Angeles, California, was appointed to the Commission to replace Myron B. Thompson.

The Development of Commission Recommendations.

In preparing this interim report, the Commission has been mindful of its duty to "take into consideration the potential effect of each law on local conditions within the Northern Mariana Islands, the policies embodied in the law and the provisions and purposes of [the] Covenant." To fulfill that duty, drafts of each of the recommendations contained in this report have been widely circulated among officials of the Government of the Northern Mariana Islands, other public officials and concerned private individuals, firms, and organizations in the Northern Mariana Islands, agencies of the Federal Government concerned with the subject-matter of the recommendation, and other interested persons. Numerous comments, criticisms, and suggestions from these sources have been of great value in preparing this report.

The Commission's Recommendations.

General recommendations.

The mandate of this Commission is to recommend to Congress which laws of the United States not applicable to the Northern Mariana Islands should be made applicable to the Northern Mariana Islands and to what extent and in what manner and which applicable laws should be inapplicable and to what extent and in what manner. In conformity with this mandate, most of the recommendations in this report are concerned with specific federal laws. During the course of its deliberations, however, the Commission has decided to make three general recommendations to guide Congress in applying particular federal legislation to the Northern Mariana Islands.

Two of the Commission's general recommendations go to the very heart of the relationship between the Northern Mariana Islands and the United States. First, the Commission recommends that Congress continue to regard the Northern Mariana Islands as the beneficiary of a trust relationship with the United States, even after termination of the trusteeship. Second, the Commission recommends that Congress not enact any legislation to amend or repeal provisions of the Covenant, except in accordance with the mutual consent and consultation provisions of sections 105 and 902 of the Covenant.

The Commission's third general recommendation is procedural. The Commission recommends that Congress, in enacting any statute, routinely consider inclusion of a provision enumerating the jurisdictions to which the statute applies.

A nonvoting delegate to the United States Congress.

Legislation should be enacted to provide the Northern Mariana Islands representation in the United States Congress by conferring the status of nonvoting Delegate to the United States House of Representatives on the Resident Representative to the United States for the Northern Mariana Islands.

Land grant colleges.

Legislation should be enacted to permit land-grant funding of a post-secondary educational institution in the Northern Mariana Islands.

Immigration and nationality.

In the drafting of the Covenant, great care was exercised in determining which federal immigration and naturalization laws should apply in the Northern Mariana Islands. Those laws, with specified exceptions, are inapplicable to the Northern Mariana Islands. No change should be made in the general framework established by the Covenant.

Legislation should be enacted, however, to address two relatively minor problems. First, legislation should be enacted to allow citizens of the Northern Mariana Islands to petition for permanent resident status in the United States for their immediate relatives.

Second, citizens of the Northern Mariana Islands who elect to become nationals rather than citizens of the United States on termination of the trusteeship cannot subsequently be naturalized as citizens of the United States without establishing a residence in another part of the United States. Legislation should be enacted to allow residence in the Northern Mariana Islands to satisfy residency requirements for naturalization of these nationals.

Nominations to the United States Military Academy, the United States Naval Academy, and the United States Air Force Academy.

Legislation should be enacted to allow the Resident Representative to the United States for the Northern Mariana Islands to nominate one individual each from the Northern Mariana Islands to attend the United States Military Academy, the United States Naval Academy, and the United States Air Force Academy at any one time.

Banking and related housing laws.

In general, most federal banking laws and related federal housing laws are now applicable in the Northern Mariana Islands. The applicable laws should continue to be applicable, with three minor modifications. In addition, five federal banking laws not now applicable in the Northern Mariana Islands should be made applicable there. The agency administering a sixth law should be given discretion to make that law applicable to the Northern Mariana Islands.

The Commission recommends nine specific legislative changes:

1. Legislation should be enacted to allow a national bank in the Northern Mariana Islands to convert into or consolidate or merge with a bank organized under the laws of the Northern Mariana Islands and to allow a bank organized under the laws of the Northern Mariana Islands to merge into a national bank.

2. The Secretary of Housing and Urban Development may increase the maximum amounts for federally-insured mortgages in Alaska, Guam, and Hawaii to allow for high construction costs in those areas. Legislation should be enacted to allow the Secretary similar discretionary authority to increase maximum amounts for federally-insured mortgages in the Northern Mariana Islands, where construction costs also can be substantially higher than prevailing costs in the forty-eight contiguous States.

3. When public funds are invested in insured savings and loan associations, federal law permits establishment of separate, "public unit" accounts so that the maximum insurable amount is not exceeded. Legislation should be enacted to allow the government of the Northern Mariana Islands to take advantage of this provision.

4. Legislation should be enacted to allow the Northern Mariana Islands, like the States of the United States, to become the owner of abandoned or unclaimed money orders, traveler's checks, and similar instruments purchased in the Northern Mariana Islands.

5. Legislation should be enacted to allow the National Consumer Cooperative Bank to make its loans and services available to eligible cooperatives in the Northern Mariana Islands.

6. Legislation should be enacted to make clear that banks organized under the laws of the Northern Mariana Islands are eligible to establish Federal branches or agencies.

7. Legislation should be enacted to extend the protections of the Depository Management Interlocks Act to the Northern Mariana Islands.

8. Legislation should be enacted to make the Right to Financial Privacy Act of 1978 applicable to the Northern Mariana Islands.

9. Legislation should be enacted to allow the Federal Farm Credit Board to extend the services of the Farm Credit System to the Northern Mariana Islands if the Board determines extension to be feasible.

Surveillance of ocean areas.

Congress should emphasize to the executive branch of the United States Government the importance of patrolling ocean areas within two hundred miles of the coastlines of the Northern Mariana Islands and monitoring foreign economic activity within that area. Congress should also ensure that sufficient funds are appropriated to the executive branch so that the United States Coast Guard can patrol these waters frequently. Legislation should be enacted authorizing the Coast Guard to utilize, on a reimbursable basis or otherwise, the personnel and resources of other federal agencies and of the government of the Northern Mariana Islands in patrolling these waters.

Investment companies.

The Investment Company Act of 1940, which requires registration of mutual funds and other investment companies and otherwise regulates their activities, is now applicable to the Northern Mariana Islands. Legislation should be enacted to exempt investment companies organized and doing business only in the Northern Mariana Islands from the provisions of this Act. A similar exemption already exists for investment companies organized and doing business only on Guam or only in any other single territory of the United States.

Automobile Dealers Day in Court Act.

Federal law protects automobile dealers in the United States against certain unfair practices by automobile manufacturers in the performance or termination of franchise agreements. Legislation should be enacted to extend the same protections to automobile dealers in the Northern Mariana Islands.

Fishery trade officers; Department of Commerce.

The United States Department of Commerce, among other functions, is given the duty "to foster, promote, and develop the foreign and domestic commerce [and] the mining, manufacturing, and fishery industries of the United States." In addition, the Secretary of Commerce appoints fishery trade officers to serve abroad to "promote United States fishing interests." Legislation should be enacted to confirm and ensure that the Northern Mariana Islands is considered part of the United States for purposes of these provisions.

Restrictions on garnishment; Fair Credit Reporting Act; Electronic Funds Transfer Act.

Legislation should be enacted to clarify and confirm the applicability to the Northern Mariana Islands of three titles of the Consumer Credit Protection Act. Those titles contain certain restrictions on the garnishment of wages; the Fair Credit Reporting Act, which regulates the conduct of credit reporting agencies; and the Electronic Fund Transfer Act, which establishes the rights and duties of persons and institutions using electronic fund transfer systems, such as automated bank teller machines and cash dispensing machines. (The other three titles of the Consumer Credit Protection Act are now applicable to the Northern Mariana Islands.)

Petroleum Marketing Practices Act.

Legislation should be enacted to make applicable to the Northern Mariana Islands a federal statute protecting gasoline and diesel fuel distributors and service stations from arbitrary or discriminatory termination or nonrenewal of their franchises by their suppliers. The legislation should also make applicable to the Northern Mariana Islands provisions in the same statute requiring sellers of gasoline to disclose the octane rating of that gasoline.

The Fishery Conservation and Management Act.

Legislation should be enacted (1) to define "State," for purposes of the Fishery Conservation and Management Act, to exclude the Northern Mariana Islands, thereby making that Act clearly inapplicable to the Northern Mariana Islands; and (2) to exclude the Northern Mariana Islands as a constituent State of the Western

Pacific Regional Fishery Management Council, but to allow the Governor of the Northern Mariana Islands to designate a nonvoting observer to the Council.

Tuna fisheries.

Legislation should be enacted (1) to require the Secretary of State, upon the request of and in cooperation with the governor of the Northern Mariana Islands, to negotiate and conclude international fisheries agreements for the conservation and management of tuna in waters adjacent to the Northern Mariana Islands; and (2) to require that the benefits accruing from any such agreements be paid to the government of the Northern Mariana Islands.

Federal crimes.

Most federal laws making specified conduct criminal should continue to apply to the Northern Mariana Islands. No legislation is necessary to achieve that result. Legislation should be enacted, however, to make inapplicable to the Northern Mariana Islands (1) certain offenses against the customs laws of the United States, since the Northern Mariana Islands is not part of the customs territory of the United States; and (2) the prohibition of importation of "flying foxes" or fruit bats of the genus Pteropus. Legislation should also be enacted to modify the applicability of federal lottery prohibitions in the Northern Mariana Islands, where lotteries are commonly used to raise funds for charitable purposes. An obsolete federal law prohibiting the export of arms, liquor, and narcotics to certain "uncivilized" Pacific islands should be repealed. Finally, a number of technical amendments to the federal criminal laws are recommended to confirm that the government and residents of the Northern Mariana Islands have the same rights and duties as do other jurisdictions and persons subject to those laws.

The Higher Education Act.

Legislation should be enacted to establish a block grant for higher education programs in the Northern Mariana Islands. This block grant will replace the Northern Mariana Islands' share of funds appropriated each year by Congress under various financial assistance programs funded under the Higher Education Act.

Creation of special United States passport for citizens of the Northern Mariana Islands.

Legislation should be enacted to grant the Secretary of State authority to issue special United States passports to citizens of the Northern Mariana Islands confirming their privilege to enter and to reside and be employed in the United States without restriction.

Money and finance.

The Secretary of the Treasury currently has authority to designate financial institutions in territories and possessions of the United States as depositaries to receive deposits of federal funds. Legislation should be enacted to give the Secretary similar authority to designate financial institutions in the Northern Mariana Islands as federal depositaries.

Legislation should also be enacted to allow the issuance of substitute checks to replace checks drawn on federal funds on deposit in the Northern Mariana Islands when the original check is lost, stolen, or destroyed. Existing law allows issuance of substitute checks to replace checks drawn on federal funds on deposit in Guam or in other territories and possessions. The proposed treatment would establish identical procedures for the Northern Mariana Islands, Guam, and the other territories and possessions.

Federal employees may allot portions of their pay to accounts in banks and savings and loans in the United States, the territories or possessions, or the Northern Mariana Islands. They may also make allotments to accounts in credit unions chartered under federal or State law. They may not, however, make an allotment to an account in a credit union chartered under the laws of the Northern Mariana Islands. Legislation should be enacted to correct this discrepancy and allow credit unions chartered under the laws of the Northern Mariana Islands to be treated as are credit unions chartered under the laws of other American jurisdictions.

The Northern Mariana Islands is eligible to receive various block grants pursuant to the Omnibus Budget Reconciliation Act of 1981. Current law applicable to each jurisdiction eligible for these grants other than the Northern Mariana Islands requires the jurisdiction to take certain steps to encourage local public participation in formulation of proposals for use of the grants and to ensure that the funds are spent as intended. Legislation should be enacted to make these requirements applicable to the Northern Mariana Islands as well.

The Rivers and Harbors Act.

Legislation should be enacted to confirm the applicability of the Rivers and Harbors Act of 1899 to the Northern Mariana Islands.

Judicial venue under the Clean Water Act, the Ocean Dumping Act, and the Ocean Thermal Energy Conversion Act.

Legislation should be enacted to make the District Court for the Northern Mariana Islands the proper forum for lawsuits arising in the Northern Mariana Islands (or in which the defendants are in the Northern Mariana Islands) under the Clean Water Act, the Ocean Dumping Act, and the Ocean Thermal Energy Conversion Act.

Postal prohibitions on lottery materials.

Provisions in the federal postal laws making certain lottery materials unmailable should be modified to exempt mail to an address within the Northern Mariana Islands for a lottery conducted in the Northern Mariana Islands by a nonprofit organization for religious, charitable, educational, or benevolent purposes.

Medicaid.

Legislation should be enacted to authorize the Secretary of Health and Human Services to waive or modify particular requirements of the Medicaid program otherwise applicable to the Northern Mariana Islands.

Submerged lands.

Legislation should be enacted to convey to the Northern Mariana Islands any property rights of the United States in lands permanently or periodically covered by tidal waters within three geographical miles of the coastlines of the Northern Mariana Islands. The proposed legislation is similar to laws already enacted to convey federal interests in submerged lands to the States of the Union, Guam, the Virgin Islands, and American Samoa. The legislation would be without prejudice to any claims the Northern Mariana Islands may have to submerged lands seaward of those conveyed by the legislation. The legislation should become effective on termination of the trusteeship, when sovereignty over the Northern Mariana Islands becomes vested in the United States.

Government depository libraries.

Legislation should be enacted to allow the governor of the Northern Mariana Islands to designate a library in the Northern Mariana Islands as a depository for publications of the United States Government.

Enforcement of federal laws in the Northern Mariana Islands.

Legislation should be enacted to confirm the authority of the government of the Northern Mariana Islands to enforce federal laws in the Northern Mariana Islands. The legislation should also authorize federal financial and technical assistance to the government of the Northern Mariana Islands in enforcing federal laws in the Northern Mariana Islands.

WELCOMING AMERICA'S NEWEST COMMONWEALTH:

THE SECOND INTERIM REPORT

OF

THE NORTHERN MARIANA ISLANDS COMMISSION ON FEDERAL LAWS

TO

THE CONGRESS OF THE UNITED STATES

INTRODUCTION

On March 24, 1976, Public Law 94-241 (90 Stat. 263) became effective, approving the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (the Covenant). Section 504 of the Covenant provided for establishment of this Commission, the Northern Mariana Islands Commission on Federal Laws:

> The President will appoint a Commission on Federal Laws to survey the laws of the United States and to make recommendations to the United States Congress as to which laws of the United States not applicable to the Northern Mariana Islands should be made applicable and to what extent and in what manner, and which applicable laws should be made inapplicable and to what extent and in what manner. The Commission will consist of seven persons (at least four of whom will be citizens of the Trust Territory of the Pacific Islands who are and have been for at least five years domiciled continuously in the Northern Mariana Islands at the time of their appointments) who will be representative of the federal, local, private and public interests in the applicability of laws of the United States to the Northern Mariana Islands. The Commission will make its final report and recommendations to the Congress within one year after the termination of the Trusteeship Agreement, and before that time will make such interim reports and recommendations to the Congress as it considers appropriate to facilitate the transition of the Northern Mariana Islands to its new political status. In formulating its recommendations the Commission will take into consideration the potential effect of each law on local conditions within the Northern Mariana Islands, the policies embodied in the law and the provisions and purposes of this Covenant. The United States will bear the cost of the work of the Commission.

Commission members were appointed in early 1980. The original members were James A. Joseph, former Under Secretary of the United

States Department of the Interior, now President and Chief Executive Officer of the Council on Foundations, Washington, D.C., who first chaired the Commission; Pedro A. Tenorio, Lieutenant Governor of the Northern Mariana Islands, Saipan, Northern Mariana Islands, who is Vice Chair of the Commission; Jesus C. Borja, Esq., private attorney, Saipan, Northern Mariana Islands; Agnes Manglona McPhetres, President of the Northern Marianas College, Saipan, Northern Mariana Islands; Edward DLG. Pangelinan, Esq., former Representative to the United States for the Commonwealth of the Northern Mariana Islands, now legislative assistant to the Delegate from Guam to the United States House of Representatives, Saipan, Northern Mariana Islands, and Olney, Maryland; and Myron B. Thompson, Trustee, Kamehameha Schools, Honolulu, Hawaii. Until his death on April 10, 1983, the Honorable Phillip Burton, Member of the United States House of Representatives from San Francisco, California, was a member of the Commission. In March 1984 the Honorable Robert J. Lagomarsino, Member of the United States House of Representatives from Ventura, California, was appointed to fill the vacancy created by Congressman Burton's death. In February 1985, Benigno R. Fitial, Member and former Speaker of the House of Representatives of the Northern Mariana Islands Legislature, was appointed to the Commission to replace James A. Joseph, and was designated Chairman of the Commission. At the same time, Joel J. Bergsma, Chief Legal Counsel to the House of Representatives of the Northern Mariana Islands Legislature was appointed to the Commission to replace Agnes M. McPhetres, and Dewey L. Falcone, private attorney, Los Angeles, California, was appointed to the Commission to replace Myron B. Thompson.

The Commission held its first meeting on May 7, 1980. It subsequently hired a small staff and proceeded with its survey of the laws of the United States.

THE NORTHERN MARIANA ISLANDS

The islands

The fourteen islands of the Northern Marianas lie along the Andesite Line. To the east of that line is the western Pacific Ocean; to the west, the Philippine Sea. Immediately to the east of the islands is the Marianas Trench, within which is the world's greatest ocean depth, 36,198 feet below sea level. The Northern Mariana Islands are situated between 14° and 21° north latitude and between 140° and 150° east longitude. That places the chain at about the same distance west of the United States mainland as Tokyo or Melbourne and about the same distance north of the equator as Mexico City or Manila. (A fifteenth island, Guam, is the southernmost of the archipelago, but it has been a separate political entity since coming under the American flag during the Spanish American War in 1898.)

"Saipan . . . and Tinian in the Marianas are 1800 miles from Shanghai, 1260 miles from Tokyo, and 1480 miles from Manila, but are 3300 miles from Honolulu and 5400 miles from San Francisco." Senate Report 94-433, The Covenant to Establish a Commonwealth of the Northern Mariana Islands 24 (1975). The Mariana Islands are nine time zones west of Washington, D.C.; six zones west of San Francisco; and four zones west of Honolulu. The International Dateline is between Honolulu and the Marianas. As a consequence of this geography, at no time do normal business hours on the east coast of the United States coincide with those in the Northern Mariana Islands.

The total land area of the Northern Mariana Islands is 184 square miles. Saipan, the largest island with 46.6 square miles, is roughly 12 miles long by 5 miles wide. Table 1 gives the population and area of each of the islands of the Northern Mariana Islands, while table 2 offers a comparison between land areas in the Northern Mariana Islands and some other, better-known jurisdictions.

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TABLE 1

ISLANDS OF THE NORTHERN MARIANAS
(listed from north to south)

	Population	Area in square miles
Uracas (Farallon de Pajaros)	--	.79
Maug	--*	.81
Asuncion	--	2.82
Agrihan	32	18.29
Pagan	54**	18.65
Alamagan	18	4.35
Guguan	--	1.61
Sarigan	--*	1.93
Anatahan	--	12.48
Farallon de Medinilla	--***	.35
Saipan	14,549	47.46
Tinian	866	39.29
Agiguan	--	2.77
Rota	1,261	32.90
Total	16,780	184.51

Source: Population figures are from U.S. Bureau of the Census, 1980 Census of Population (PC80-1-A57A, 1982). Areas are from E. Bryan, Guide to Place Names in the Trust Territory of the Pacific Islands (1971).

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*Section 2 of Article XIV of the Constitution of the Northern Mariana Islands requires that "[t]he islands of Sariguan [Sarigan] and Maug and other islands specified by law shall be maintained as uninhabited places and used only for the preservation of bird, fish, wildlife and plant species except that the legislature may substitute in place of Sariguan another island as well suited for that purpose."

**In May 1981 Mt. Pagan erupted, forcing evacuation of the 54 persons then residing on the island of Pagan. Pagan People Reach Safety, Pacific Daily News (Guam), May 18, 1981, at 1. Continued volcanic activity has prevented their return.

***Farallon de Medinilla, leased to the United States Government pursuant to sections 802 and 803 of the Covenant, is used by the Armed Forces as a bombing practice range.

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TABLE 2

LAND AREAS: THE NORTHERN MARIANA ISLANDS AND SELECTED OTHER JURISDICTIONS

	Area in square miles
Northern Mariana Islands	184
Saipan, Northern Mariana Islands	47
Rhode Island (smallest State of the United States)	1,214
Oahu, Hawaii	593
Hong Kong (including Kowloon and New Territories)	398
Singapore	226
Malta	122
Staten Island, New York	58
Manhattan Island, New York	23
Bermuda	20

Sources: 1981 World Almanac & Book of Facts 443, 449, 558, 575, 591 (1980); E. Bryan, Guide to Place Names in the Trust Territory of the Pacific Islands (1971).

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From Uracas in the north to Rota in the south is approximately 338 miles, or roughly the distance from Albany, New York, to Baltimore. Guam is 32 miles south of Rota.

Many of the islands of the Pacific are low-lying coral atolls, rising only a few feet above sea level. The islands of the Northern Marianas, however, are high islands, of volcanic origin. Volcanoes in the northernmost islands of the chain are young and fairly active. In May 1981 a major eruption of Mt. Pagan forced the evacuation of Pagan Island's entire population of 54 persons.

The Northern Mariana Islands are tropical, but not uncomfortably so. The islands lie in a northeasterly trade wind belt and experience winds from the northeast almost constantly. Due to the great distances the trade winds travel over the ocean uninterrupted by major land masses, they are remarkably steady, averaging at least 10 knots day in and day out through most of the year. See generally G. Rumney, Climatology and the World's Climates 637 (1968); U.S. Weather Bureau, Atlas of Climatic Charts of the Oceans, charts 27-30 (1938).

According to the Guinness Book of World Records, Saipan--the most populated of the Northern Mariana Islands--has the most "equable" climate of any place in the world:

> During the nine years 1927-35, inclusive, the lowest temperature recorded [on Saipan] was 67.3°F Jan. 30, 1934, and the highest was 88.5°F Sept. 9, 1931, giving an extreme of 21.2°F.

N. McWhirter (ed.), Guinness 1983 Book of World Records 124 (1982).

Average rainfall in the Northern Mariana Islands is 82.2 inches per year. 4 Worldmark Encyclopedia of the Nations 394 (5th ed. 1976). While wet and dry seasons are not clearly differentiated, the heaviest rainfall usually occurs from July through October. E. Gallahue, The Economy of the Mariana Islands 2 (ms. 1946). The islands lie in "typhoon alley," the northwesterly track of tropical storms originating in the area north of Ponape and east of the Marshall Islands. Typhoon alerts are frequent from July through November each year and, several times each decade, one or more islands in the chain are devastated by savage typhoons.

The people

The islands of the Pacific are often classified, according to the ethnic derivation of their inhabitants, as Polynesian, Melanesian, or Micronesian. See generally D. Oliver, The Pacific Islands 21 (rev. ed. 1961). The Northern Mariana Islands are a part of Micronesia, the grouping that also includes the Caroline and Marshall Islands.*

The principal ethnic groups in the Northern Mariana Islands are the Chamorros and the Carolinians. (Both groups are considered Micronesian.) The Chamorro population is the larger of the two, although definitive statistics on the relative sizes of the groups do not appear to be available.

The 1980 census recorded 16,780 persons living in the Northern Mariana Islands. As shown in table 1, the large majority of the population, 14,549 persons, lives on Saipan. The next most populated islands are Rota, with 1,261 persons, and Tinian, with 866. The other islands are sparsely inhabited or uninhabited.

The population of the Northern Mariana Islands, like that in many less-developed areas, is noticeably younger than that of the

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*"Micronesia" is often used synonymously with the Trust Territory of the Pacific Islands, and the two labels are largely overlapping. Micronesia, however, is generally considered to include Guam, Nauru, and the islands of Kiribati (formerly, the Gilberts), none of which are part of the Trust Territory. The Trust Territory, on the other hand, includes the Polynesian atolls of Nukuoro and Kapingamarangi.

United States, while the average household in the Northern Mariana Islands has almost twice as many members as the typical home in the United States.

Table 3 offers some demographic comparisons between the Northern Mariana Islands and the United States.

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TABLE 3

THE UNITED STATES AND THE NORTHERN MARIANA ISLANDS:
DEMOGRAPHIC COMPARISONS

	United States	Northern Mariana Islands
Population	231,106,727	16,780
Area in square miles	3,539,289	184
Population per square mile	64.0	91.2
Population per household	2.76	5.36
Median age of population	30.0	19.7
Percent of population under 18 years of age	27.5	58.9

Source: U.S. Bureau of the Census, Statistical Abstract of the United States: 1982-83, at 6, 43, 200, 846-47 (103d ed. 1982).

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History

> Nobody knows for sure where the first Chamorros came from. It is safe to assume that the original Chamorros belonged to the large group of Pacific peoples known generally as Malayo-Polynesian, but there is no certain evidence to tell us where the first inhabitants of the Mariana Islands came from. . . .
>
> After the near extermination of the pre-Spanish Chamorros through epidemic diseases and mass murders, outbreeding was most common, especially with Spanish and Filipino groups. These admixtures were then further modified by later contacts with other Europeans, Americans, and Japanese.

D. Topping, Chamorro Reference Grammar 2 (1973).*

The first Carolinians came to the Northern Mariana Islands early in the 19th century from atolls in the Caroline Islands to the south, at a time when the Spanish administration had removed almost all of the Chamorro inhabitants from the Northern Mariana Islands to Guam.

> [T]he Marianas are exceptional in Oceania in that they were colonized and their inhabitants thoroughly acculturated at a much earlier date than the other islands of Micronesia, Polynesia, and Melanesia.

A. Spoehr, Conquest Culture and Colonial Culture in the Marianas during the Spanish Period in N. Gunson (ed.), The Changing Pacific 274, 252 (1978). The lengthy Spanish administration among other things imprinted the islands with the still-dominant Roman Catholic faith.

Early efforts at agricultural exploitation of the islands, begun during the relatively short German rule of the Northern Mariana Islands, gave way to massive importation of labor and capital during the Japanese League of Nations mandate. "When Japan assumed control in 1914, there were reported to be about 100 resident Japanese in the German Marianas . . . ." F. Keesing, The South Seas in the Modern World 354 (rev. ed. 1945). By 1937, the 4,180 Chamorro and Carolinian inhabitants of the Northern Mariana Islands were outnumbered in their own islands by 42,688 Japanese. T. Yanaihara, Pacific Islands under Japanese Mandate 30 (1940).

World War II left no families in the Northern Mariana Islands untouched. American landings on the beaches of Saipan marked the

*See also Underwood, The Native Origins of the Neo-Chamorros of the Mariana Islands, 12 Micronesica (Journal of the University of Guam) 203 (1976).

beginning of one of the bloodiest island battles of the Pacific campaign. Three thousand four hundred twenty-six Americans and 27,586 Japanese were killed on the Saipan; another 314 Americans and 6,939 Japanese perished in the fight for neighboring Tinian. 18 Encyclopedia Americana, Mariana Islands 284 (1972).

More than 300 Chamorros and Carolinians, roughly nine percent of their total population, were killed during the hostilities. A. Spoehr, Saipan: The Ethnology of a War-Devastated Island 92 (1954). One contemporary observer described the immediate postwar situation in these words:

> Natives in each of the islands, who had been sucked into the maelstrom of battle or caught in preparations for the major offensive on Japan, had the normal tenor of family life disrupted and disarranged. Natives at times during combat were fighting for their individual lives, as well as those of their kin. Loss of natives' lives in each island and repatriation of Orientals from Saipan and Rota had left more than the normal number of widows and orphans. Native laborers from Saipan and Rota had been taken to other islands, either voluntarily or forcibly, many had not been returned. In such instances families were broken, many wives and children were without direct means of support, and family plans for the rehabilitation and development of their resources were largely at a standstill due to lack of normal guidance. Native homes, also practically all their personal property, had been lost. Many natives had their land taken over for military or other uses. Pre-war sources of income had either vanished or changed radically on Saipan and Rota.

E. Gallahue, The Economy of the Mariana Islands 25 (ms. 1946).

Saipan, Tinian, and nearby Guam played an important role in ending World War II in the Pacific. From November 1944, B-29s based on the three islands bombed Japan unremittingly until the atomic bombs, carried by B-29s from Tinian, forced Japan's surrender in August 1945. During this period Saipan was second only to Hawaii as a support base for American forces in the western Pacific, while the airfield complex on Tinian was the largest in the world.

The first government in the Northern Mariana Islands as the islands were wrested form the Japanese forces was of necessity military government. The United States Navy was given the responsibility for governing the Northern Mariana Islands. On Saipan and Tinian, where most houses had been destroyed, the Chamorro and Carolinian inhabitants were housed and provided their basic needs in centralized camps. Not until July 4, 1946, a day still celebrated as "Liberation Day" in the Northern Mariana Islands, were the

inhabitants permitted to reside outside the camps. In the meantime, virtually all the Japanese survivors of the war in the Northern Mariana Islands, as well as the colonists from Korea and other nations brought to the islands by Japan, had been repatriated to their homelands. The American military presence likewise was drastically reduced, as part of the worldwide postwar demobilization.

In the period immediately following the war, the Northern Mariana Islands and the other islands of the Japanese mandate commanded far more attention at the international level than at the local level. At Yalta in 1945, President Roosevelt, Prime Minister Churchill, and Marshall Stalin agreed that the former League of Nations mandates should become international trusteeships under the auspices of the United Nations. The United States was instrumental in ensuring that provision for such a trusteeship system was included when the United Nations Charter was drafted later in 1945.

Even though the United States had been prominent in establishing the trusteeship system, within the United States the Navy and War Departments, with support from many other quarters, opposed placing under international supervision the islands so recently taken at such a high cost from the Japanese. These interests preferred outright annexation of the islands.

In 1946 President Truman decided that the Northern Mariana Islands and the other islands of the former Japanese mandate would become a "strategic" trusteeship under Article 83 of the United Nations Charter. Article 83, which had been drafted with these particular islands in mind, allows the Security Council of the United Nations (where the United States has veto power) rather than the Trusteeship Council (where no nation has veto power) to exercise all functions of the United Nations with respect to strategic trusteeships. In 1947 the Security Council and the United States Congress, in a joint resolution signed by President Truman, approved the Trusteeship Agreement for the Former Japanese Mandated Islands. The Trust Territory of the Pacific Islands came into being on July 18, 1947. The administrative headquarters of the Trust Territory was established at Pearl Harbor in Hawaii (well outside the geographic limits of the Trust Territory).

In the Northern Mariana Islands and the rest of the Trust Territory, government remained a responsibility of the United States Navy until 1951, when President Truman transferred administrative responsibility to the Department of the Interior. In late 1952, however, Saipan and Tinian were returned to Navy jurisdiction and, shortly thereafter, the sparsely populated islands north of Saipan were also returned to Navy control. (Thus, only Rota continued to be governed by the Department of the Interior). In 1962 President Kennedy transferred administrative responsibility for all of the Northern Mariana Islands back to the Department of the Interior. In

the intervening years under Navy administration, Saipan was the site of a secret Central Intelligence Agency training facility. Access by outsiders to the Navy-controlled Northern Mariana Islands during this period was limited. In 1962, also, the administrative headquarters for the Trust Territory was brought to the Trust Territory for the first time, and established on Saipan in the quarters recently vacated by the Central Intelligence Agency.

In the same year President Kennedy initiated "a policy of bringing the Trust Territory into a permanent relationship with the United States." Senate Report 94-433, at 37 (1975). In furtherance of that policy, a survey mission was sent to the Trust Territory to report and make recommendations "on the political, economic, and social problems of Micronesia." Id. The mission's report, among many other specific recommendations, "proposed significant increases in the Trust Territory budget and emphasized the need for a territory-wide legislature." Id. Congressional appropriations for the Trust Territory subsequently were significantly increased and, in 1965, by order of the Secretary of the Interior, the Congress of Micronesia was established as a legislative body for the entire Trust Territory.

Among the first items of business on the agenda of the Congress of Micronesia was resolution of the future political status of the Trust Territory. (By the time the Congress was created, eight of the eleven United Nations trust territories created after the Second World War had become independent. The ninth and tenth, Nauru and New Guinea, were well on their way to that status. Nauru became independent in 1968 and New Guinea, in union with Papua, became independent in 1975.) Despite a history of local legislative resolutions, petitions, and plebiscites expressing a desire for separation from the rest of Micronesia and for close association with the United States, the Northern Mariana Islands joined with the other areas of Micronesia in negotiations with the United States to end the trusteeship and establish the future political status of the Trust Territory. By 1972, however, it was clear that the objectives of the Northern Mariana Islands and those of the rest of the Trust Territory in negotiating a future political status did not coincide. In April 1972 the United States acceded to a request by the Northern Mariana Islands for status negotiations separate from those for the rest of Micronesia.

Negotiations between the Northern Mariana Islands and the United States proceeded forthwith and, in February 1975, the Marianas Political Status Commission and the Personal Representative of the President of the United States signed the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America. Five days later, the Covenant was unanimously approved by the Mariana Islands District Legislature (the local legislative body for all of the Northern Mariana Islands). On

June 17, 1975, after several months of campaigning, the Covenant was approved in a plebiscite observed by representatives of the United Nations. Ninety-five percent of the eligible voters in the Northern Mariana Islands registered to vote. Ninety-five percent of those registered in fact voted in the plebiscite. Of those voting, 78.8 percent voted in favor of the Covenant.

On March 24, 1976, the Covenant was approved by a joint resolution of the Congress of the United States, signed by President Ford. Public Law 94-241, 90 Stat. 263. (The text of the Covenant is reproduced in the Appendix to this report.)

In 1977, pursuant to authority granted in the Covenant, the people of the Northern Mariana Islands drafted and approved their own constitution. That constitution, by proclamation of President Carter, became effective on January 9, 1978, the same day the first popularly elected governor of the Northern Mariana Islands assumed office.

Most provisions in the Covenant became effective on its approval by the United States Congress or on establishment of the constitutional government in the Northern Mariana Islands on January 9, 1978. The remaining provisions will become effective on termination of the trusteeship. Principal among these remaining provisions are the vesting of sovereignty over the Northern Mariana Islands in the United States and the conferral of United States citizenship upon citizens of the Northern Mariana Islands.

When the trusteeship will end had not been determined at the time this report went to press. The United States has taken the position that the trusteeship will end for all parts of the Trust Territory at the same time. 1 Public Papers of the Presidents: Gerald R. Ford 1975, at 898, 899 (1977). Termination thus depends upon the satisfactory conclusion of negotiations between the United States and the three other political entities in the Trust Territory: the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau. A "Compact of Free Association" has been agreed upon by negotiators for the United States and negotiators for the Republic of the Marshall Islands and the Federated States of Micronesia, and has been submitted to the United States Congress for its approval. 21 Weekly Compilation of Presidential Documents 203 (1985); 20 id. 454 (1984). Final agreement has not yet been reached between negotiators for the United States and their counterparts for the Republic of Palau.

Table 4, A Northern Mariana Islands Chronology, presents some of the more important dates in the history of the Northern Mariana Islands.

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TABLE 4

A NORTHERN MARIANA ISLANDS CHRONOLOGY

2496 B.C. +/- 200 years	Archeological evidence shows the Northern Mariana Islands were inhabited at least as early as this.
1521 A.D.	Magellan's landing on Guam marks first European contact with Mariana Islands.
1564	Spain claims sovereignty over Mariana Islands.
1668-1821	Mariana Islands are ruled by Spanish governors reporting to Mexico.
1821-1898	Mariana Islands are ruled by Spanish governors reporting to the Philippines.
1898	Guam is captured by the United States in Spanish-American War.
1899	Spain sells the Northern Mariana Islands to Germany.
1899-1914	Germany administers the Northern Mariana Islands as part of its New Guinea protectorate.
1914	Japan, at war with Germany, occupies the Northern Mariana Islands.
1919	Japan receives League of Nations mandate to govern the Northern Mariana Islands (and the Marshall and Caroline Islands).
1934	Japan withdraws from the League of Nations.
1941, December 8-10	Japanese armed forces, based on Saipan and Rota, attack and occupy Guam.

1944, June-July	United States armed forces attack and occupy Saipan and Tinian, and recapture Guam.
1947, July 18	The United States Congress by joint resolution approves the Trusteeship Agreement for the Former Japanese Mandated Islands, T.I.A.S. No. 1605, 61 Stat. 3301, making the United States responsible to the United Nations for administration of the Northern Mariana Islands (and the Marshall and Caroline Islands). 61 Stat. 397. The new Trust Territory of the Pacific Islands is placed under administration of the United States Navy. Executive Order 9875, 3 C.F.R., Comp. 1943-48, at 658.
1951, June 29	President Truman transfers administration of the Trust Territory from the Navy to the Department of the Interior. Executive Order 10265, 3 C.F.R., Comp. 1949-53, at 766.
1952, November 10	President Truman returns Saipan and Tinian to Navy administration. Executive Order 10408, 3 C.F.R., Comp. 1949-53, at 906.
1953, July 17	President Eisenhower returns islands north of Saipan to Navy administration, leaving Rota the only island in the Northern Marianas under Department of the Interior administration. Executive Order 10470, 3 C.F.R., Comp. 1949-53, at 951.
1953, August 8	First specific congressional authorization of appropriations for the Trust Territory of the Pacific Islands is approved.* 67 Stat. 494.

*Earlier appropriations were made without specific authorization. See, for example, Act of July 9, 1952, c.597, 66 Stat. 445, 457-58.

1962, May 7	Administration of the Northern Mariana Islands (except Rota) is transferred from Navy to Department of the Interior (already administering Rota). Executive Order 11021, 3 C.F.R., Comp. 1959-63, at 600.
1965, February 16	Legislative authority for the Trust Territory is transferred from United States-appointed High Commissioner to newly-established Congress of Micronesia, subject to Department of the Interior veto. U.S. Department of the Interior Order 2882 (Sept. 28, 1964).
1967, August 5	Congress of Micronesia creates its first commission to explore future political status options. Trust Territory of the Pacific Islands, Senate Joint Resolution 25.
1969, August 29	Congress of Micronesia creates Micronesia Political Status Delegation to negotiate future political status with representatives of the United States. Trust Territory of the Pacific Islands, Public Law 3C-15.
1969, September 30	First meeting is held between Micronesian political status delegation and United States officials.
1972, April 12	United States agrees to Northern Mariana Islands' request for political status negotiations conducted separately from those for the rest of Micronesia.
1975, February 15	The Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (the Covenant) is signed by the Marianas Political Status Commission for the people of the Northern Mariana Islands and by the President's Personal Representative for the United States.
1975, February 20	The Covenant is approved by a unanimous vote of the Mariana Islands District Legislature.

1975, June 17	The Covenant is approved by 78.8% of the people of the Northern Mariana Islands voting in a plebiscite.
1976, March 24	The Covenant is approved by joint resolution of the Congress of the United States. Public Law 94-241, 90 Stat. 263.
	The following provisions of the Covenant came into full force and effect: Section 105 (United States legislative power); Section 201-203 (Northern Mariana Islands Constitution); Section 503 (inapplicable federal laws); Section 504 (Commission on Federal Laws); Section 606 (social security); Section 801 (property of the Trust Territory in the Northern Mariana Islands); Section 903 (enforceability of Covenant in courts of United States); and Sections 1001-1005 (approval, effective dates, and definitions).
1976, April 1	United States administration of the Northern Mariana Islands is separated from that of the remainder of the Trust Territory. U.S. Department of the Interior Order 2989 (March 24, 1976).
1977, March 6	The Constitution of the Northern Mariana Islands is ratified by 92% of the people of the Northern Mariana Islands voting.
1977, October 24	Presidential Proclamation 4534 announces approval of the Constitution of the Northern Mariana Islands by the United States and sets January 9, 1978, as date for establishment of constitutional government in the Northern Mariana Islands.

1978, January 9

The Constitution of the Northern Mariana Islands comes into full force and effect.

Constitutional government is established; the first elected governor and the first Commonwealth legislature take office.

The following provisions of the Covenant come into full force and effect:

- Section 102 (supremacy of Covenant and applicable federal law);
- Section 103 (local self-government);
- Section 204 (oath of office);
- Section 304 (privileges and immunities);
- Sections 401-403 (judicial authority);
- Section 501 (applicability of provisions of the United States Constitution);
- Section 502 (applicable federal laws);
- Section 505 (continuity of prior laws);
- Section 601-605 (revenue and taxation);
- Section 607 (bonds and other obligations of the Northern Mariana Islands);
- Sections 701-704 (United States financial assistance);
- Sections 802-805 (lease of land to United States; restraints on alienation);
- Section 901 (Resident Representative to the United States); and
- Section 902 (mutual consultation).

end of trusteeship

The following provisions of the Covenant come into full force and effect:

- Section 101 (establishment of Commonwealth;
- Section 104 (United States foreign affairs and defense responsibility);

Section 301-303 (citizenship and nationality);
Section 506 (immigration and nationality);
Section 806 (acquisition of Northern Mariana Islands land by United States); and
Section 904 (international matters).

* * * * * * *

The economy

The Gross Island Product for the Northern Mariana Islands for 1982 was estimated at $165,000,000. Commonwealth of the Northern Mariana Islands, Overall Economic Development Strategy 5 (1983) (hereafter, Overall Economic Development Strategy). Tourism is the principal industry, with more than 80 percent of all visitors originating in Japan. Id. at 23-24. That industry has experienced rapid expansion in recent years, with 767 hotel rooms now available in the Northern Mariana Islands. Id.

The development of commercial fisheries in the waters surrounding the Northern Mariana Islands is widely considered as one of the most promising approaches to the economic advancement of the Northern Mariana Islands. See id. at 23, 53-54; Robert R. Nathan Associates, Inc., Assessment of Current and Prospective Socio-economic Conditions in the Commonwealth of the Northern Mariana Islands 15, 18, 89 (1980) (hereafter, Nathan Report). At present, commercial fishery operations based in the Northern Mariana Islands are quite limited and the value of seafood imports to the Northern Mariana Islands exceeds the value of the local catch. Commonwealth of the Northern Mariana Islands, Fisheries Development Plan 4-5, 7 (1981). Nonetheless, the potential for future development is demonstrated by the high level of current activity by Japanese, Korean, and Taiwanese fishing vessels in the waters adjacent to the Northern Mariana Islands and by the substantial Japanese fishery based in the Northern Mariana Islands before the Second World War. Id. at 4, 7.

A third important sector of the economy is agriculture. The largest agricultural operation is the 7,000-acre Bar-K Ranch on Tinian, which raises dairy and beef cattle and swine. Nathan Report 12. Small farms "featuring an acre of tree crops (fruits and coconuts), vegetable gardens and a few small livestock (chickens, goats, pigs)" supplement family income for many families in the Northern Mariana Islands. Id. In general, agriculture is now "an economic activity of only secondary importance." Id. By contrast, during the Japanese administration of the Northern Mariana Islands, sugar cane and other crops were intensively cultivated. While now only 600 acres in the Northern Mariana Islands are under cultivation, in 1937 36,900 acres were reportedly under cultivation. Id. (It should be noted, however, that agriculture during the Japanese period was largely in the hands of Japanese, Okinawan, and Korean immigrants, with little of its profits inuring to the Chamorro and Carolinian inhabitants of the islands.)

Employers in the Northern Mariana Islands (other than the Federal Government and its contractors) are not subject to federal minimum wage laws. A locally-imposed minimum wage of $2.15 per hour is in effect. 4 Code of the Northern Mariana Islands § 9221 (1984). (The federal minimum wage, by contrast, is $3.35 per hour.)

A frequently-cited weakness of the economy of the Northern Mariana Islands is the large percentage of the labor force employed in the public sector. In 1982, 21 percent of wage and salary earners were employed by the Government of the Northern Mariana Islands, while another six percent were employed by the Government of the Trust Territory of the Pacific Islands (which, although no longer concerned with the Northern Mariana Islands, continues to be based there). Overall Economic Development Strategy 18. By contrast, in the United States in 1981, federal, State, and local government employees account for less than 16 percent of the employed labor force. U.S. Bureau of the Census, Statistical Abstract of the United States 1982-83, at 303, 375 (103d ed. 1982).

The large proportion of the labor force in the public sector of the Northern Mariana Islands is primarily due to the small population and the insularity of the islands. Some minimal number of persons are necessary to provide basic governmental services, regardless of the number of persons served. The Northern Mariana Islands, with its small population, enjoys few economies of scale and, consequently, must employ a larger proportion of its labor force to provide those services. The need for additional employees in the public sector is also attributable to some extent to the insular character of the area. Each island must have its own power supply and water system. Transportation and communication difficulties favor decentralization of some other basic government functions, such as public safety, and road construction and maintenance, again with the loss of economies of scale. Additionally, health care and power generation, which in other communities may be private sector activities, throughout the American administration of the Northern Mariana Islands have been part of the public sector.

Even though the public sector employs a disproportionate percentage of the labor force, public sector employment declined by 30 percent between 1977 and 1982, while private sector employment increased by 74 percent. Overall Economic Development Strategy 18.

Unemployment in 1984 was estimated at just under twelve percent of the total labor force. P. Leddy, The Unemployment Situation on CNMI: July 1984 (ms. 1984).

Almost 39 percent of the labor force in the Northern Mariana Islands are aliens. NMI Jobless Rate Drops, Pacific Daily News (Guam), February 4, 1983, Focus supplement, at 9A. Most of these aliens are employed in construction trades, while others work as entertainers and maids. Id. Eighty-one percent of the alien workers in the Northern Mariana Islands are from the Philippines. Most of the rest are from Japan, Korea, and China. INO Reports 4,907 Aliens, Marianas Variety, March 22, 1985, at 6.

THE COMMISSION

The Commission's methodology

Examination of the entire body of federal law to determine which laws should and which laws should not apply to the Northern Mariana Islands is a formidable task. Federal law includes the Constitution of the United States, treaties between the United States and foreign countries, nearly two hundred years of statutes codified into the forty-eight active titles of the United States Code, the volumes of administrative regulations collected in the Code of Federal Regulations, and judicial and administrative interpretations of all the foregoing. Mindful of its mandate to report to Congress, the Commission has concentrated its attention on federal statutory law, that part of the body of federal law that can be changed only by Congress.

The Commission recognized that study of any given federal statute could consume a substantial portion of the total resources available to the Commission. For example, expert consultants could be retained to perform independent investigations to determine the effects of a statute on the Northern Mariana Islands. To make optimal use of its resources, the Commission decided to rely on published sources, on work done by others, and on the efforts of its own staff in preparing this report. Any distortions caused by this reliance, it is hoped, were corrected by the extensive circulation of its work for critical comment, as described below.

The Commission decided early in its existence to focus on existing problems in the application of particular federal laws to the Northern Mariana Islands rather than to start with title 1 of the United States Code and proceed sequentially through each title. Accordingly, the Commission sent letters to the principal agencies of the Federal Government and to public officials and private persons in the Northern Mariana Islands, notifying them of the Commission's establishment and its task, and seeking from them descriptions of problems encountered in the application of particular federal laws to the Northern Mariana Islands. From responses to these letters and from suggestions of Commission members and staff, the Commission developed a list of general subjects and particular federal statutes to be given high priority. This list of priorities was revised and updated at each meeting of the Commission to take into account problems of which the Commission had previously been unaware and other developments since the previous formulation of the list.

Once a general subject matter or a particular statute was selected for study, the Commission's staff prepared a draft recommendation on the selected topic. The format generally followed in these recommendations included a summary description of the purpose and operation of the statute (or statutes) at issue, findings

on whether the statute is now applicable to the Northern Mariana Islands, a discussion of the pros and cons of applying the statute there, and a specific recommendation that the statute(s) apply, apply only in a certain way, or not apply to the Northern Mariana Islands in the future. If the draft recommended a change in a statute's applicability, legislative language was proposed to accomplish that change.

Once a draft staff recommendation had been prepared, it was circulated for comment to the members of the Commission; to federal agencies concerned with its subject matter; to the Department of Interior's Office of Territorial and International Affairs; to public officials, private institutions, and individuals in the Northern Mariana Islands; and to other persons knowledgeable or expressing an interest in the subject matter of the draft. The draft was then revised as necessary in light of comments received and presented to the Commission for consideration.

All of the Commission's recommendations for changes in federal laws in this report were developed through the process just described. All of the Commission's recommendations were adopted without dissent.

Determining the applicability of federal statutes to the Northern Mariana Islands

The applicability of a particular federal statute to* the Northern Mariana Islands may be determined by the terms of the statute, by provisions in the Covenant that specifically treat the applicability of certain statutes, or by general formulae in the Covenant for determining the applicability of federal law to the Northern Mariana Islands. Careful attention must be given to the date the statute was enacted (or the date of enactment of any earlier statute amended by the statute in question), the date the Covenant was approved by the Congress of the United States (March 24, 1976), and the effective date of provisions in the Covenant affecting the statute's applicability (January 9, 1978, or March 24, 1976).

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*The phrases "applicable to the Northern Mariana Islands" and "applicable in the Northern Mariana Islands" are used synonymously in this report.

The effective date for most provisions in the Covenant making particular federal statutes applicable to the Northern Mariana Islands is January 9, 1978. See Covenant § 1003(b) and Presidential Proclamation 4534, 42 Fed. Reg. 56593 (1977), which govern Covenant §§ 403(b), 502, 601,* 603-605, 703. Provisions in the Covenant making particular federal statutes inapplicable to the Northern Mariana Islands generally became effective when Congress approved the Covenant on March 24, 1976. See Covenant § 1003(a), governing id. §§ 503, 606.

Statutes mentioned specifically in the Covenant.

The applicability of certain federal laws to the Northern Mariana Islands is specifically dictated by provisions in the Covenant. Those laws and the correlative Covenant provisions are listed in table 5.

Statutes enacted on or before January 9, 1978.

Section 502 of the Covenant establishes several formulae for determining the applicability to the Northern Mariana Islands of federal laws enacted on or before January 9, 1978, the effective date of section 502. Section 502 provides:

> (a) The following laws of the United States in existence on the effective date of this Section and subsequent amendments to such laws will apply to the Northern Mariana Islands, except as otherwise provided in this Covenant:
>
> > (1) those laws which provide federal services and financial assistance programs and the federal banking laws as they apply to Guam; Section 228 of Title II and Title XVI of the Social Security Act as it applies to the several States; the Public Health Service Act as it applies to the Virgin Islands; and the Micronesian Claims Act as it applies to the Trust Territory of the Pacific Islands;
> >
> > (2) those laws not described in paragraph (1) which are applicable to Guam and which are

*But see section 205 of Public Law 96-205, 94 Stat. 84 (1980); section 303(a) of Public Law 96-597, 94 Stat. 3477 (1980); and section 3(a) of Public Law 98-213, 97 Stat. 1459 (1983).

* * * * * * *

TABLE 5

CITATIONS OF FEDERAL LAW IN THE COVENANT

Federal law	Mentioned in Covenant section
United States Constitution	501
Title 28, U.S.C. (Judiciary and Judicial Procedure)	403(b)
Laws providing federal services and financial assistance programs	502(a)(1); 703(a)
Federal banking laws	502(a)(1)
Section 228 of title II of the Social Security Act (certain old-age benefits) [42 U.S.C. § 428]	502(a)(1)
Title XVI of the Social Security Act (supplemental security income for the aged, blind, and disabled) [42 U.S.C. §§ 1381 et seq.]	502(a)(1)
Public Health Service Act [42 U.S.C. §§ 201 et seq.]	502(a)(1)
Micronesian Claims Act [85 Stat. 92; 87 Stat. 460]	502(a)(1)
Laws regarding coastal shipments; coastwise laws	502(b); 503(b)
Laws regarding conditions of employment, including wages and hours of employees	502(b)
Immigration and naturalization laws	503(a); 506
Prohibitions against foreign vessels landing fish or unfinished fish products in the United States	503(b)
Minimum wage provisions of Section 6, Act of June 26, 1938, 52 Stat. 1062, as amended [29 U.S.C. § 206]	503(c)
Income tax laws	601, 703(b)

TABLE 5 (CONTINUED)

Federal law	Mentioned in Covenant section
Customs laws	603, 605, 703(b)
Excise taxes	604, 606(b)
Soldiers and Sailors Relief Act of 1940, as amended [50 U.S.C. App. §§ 501 et seq.]	605
Self-employment taxes	606(b)
Social security retirement benefits	606
Title 26, chapters 2 (tax on self-employment income) and 21 (Federal insurance contributions act)	703(b)

* * * * * * *

of general application to the several States as they are applicable to the several States; and

(3) those laws not described in paragraphs (1) or (2) which are applicable to the Trust Territory of the Pacific Islands, but not their subsequent amendments unless specifically made applicable to the Northern Mariana Islands, as they apply to the Trust Territory of the Pacific Islands until termination of the Trusteeship Agreement, and will thereafter be inapplicable.

(b) The laws of the United States regarding coastal shipments and the conditions of employment, including the wages and hours of employees, will apply to the activities of the United States Government and its contractors in the Northern Mariana Islands.

With regard to section 502, the negotiators of the Covenant stated:

The interim formula stated in this Section is not intended to be the exclusive method by which laws of the United States are or can be made applicable to the Northern Mariana Islands. The Congress of the United States will have power subject to Section 105 to alter the manner and extent to which laws covered by the formula apply to the Northern Mariana Islands, to make laws not covered by the formula applicable or to make laws covered by the formula inapplicable. The formula does not make the Northern

> Mariana Islands into a territory or possession of the United States prior to termination. In many instances, however, the Northern Mariana Islands will be treated as if it were a territory or possession of the United States prior to termination, for many laws applicable to Guam because it is a territory or possession will become applicable to the Northern Mariana Islands.
>
> The phrase "applicable to Guam" or "applicable to the Trust Territory of the Pacific Islands" in this Section is to mean "applicable within" as well as "with respect to" the geographic areas mentioned or the people who reside in or who are citizens of those geographic areas.

Report of the Joint Drafting Committee on the Negotiating History of the Covenant C-3 (1975), reprinted at Hearings before the Subcommittee on Territorial and Insular Affairs of the House Committee on Interior and Insular Affairs on H.J. Res. 549 et al. to Approve the "Covenant to Establish a Commonwealth of the Northern Mariana Islands," 94th Cong., 1st Sess. 374, 376 (1975).

The touchstone for determining the applicability to the Northern Mariana Islands of a federal statute enacted on or before January 9, 1978, (and subsequent amendments to the statute*) is thus most often the applicability of the statute to Guam. Whether a particular statute is applicable to Guam is determined, first, by examination of the language of the statute and, second, if the language provides no unambiguous answer, by ascertaining the intent of Congress. (Congressional intent in this context is discussed below.)

Guam is a "territory or possession" of the United States. A statute may be applicable to Guam by specific mention of Guam or by reference to the "territories and possessions of the United States."

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*Determining whether a statute enacted after January 9, 1978, amends a statute enacted before that date is not always easy. See, for example, the discussion of the present applicability of subchapters III and VI of chapter 41 of title 15 of the United States Code, in the Title-by-title Survey section of this report.

* * * * * * *

TABLE 6

TERRITORIES AND POSSESSIONS OF THE UNITED STATES

Territory or possession	Date of acquisition	Area in Square miles	1980 population
District of Columbia	-	69	638,000
Puerto Rico	1898	3,515	3,196,520
Guam	1898	209	105,979
American Samoa	1899	77	32,297
Virgin Islands of the United States	1917	132	96,569
Northern Mariana Islands	end of trusteeship	184	16,780

Source: U.S. Bureau of the Census, Statistical Abstract of the United States: 1984, at 8, 12, 202, 203 (104th ed. 1983). Data for United States possessions without permanent populations, such as Wake Island and Johnston Atoll, are omitted.

* * * * * * *

But federal statutes may apply, not to "territories and possessions," but rather to "Territories" or to "territories." Congress has enacted an organic act establishing a civil government for Guam. 48 U.S.C. §§ 1421 et seq. Guam is thus an "organized" territory of the United States. See United States v. Standard Oil Co., 404 U.S. 558, 559 n.2 (1972). Guam is not, however, incorporated. 48 U.S.C. § 1421a. Incorporated territories are those predestined for Statehood. A distinction is sometimes made between "Territory" and "territory," with the capitalized form deemed to apply only to incorporated territories and the lower-case form deemed to mean only unincorporated territories or used as a generic term, to include both incorporated and unincorporated territories. See, for example, House Report 93-507 (1973), reprinted at 1973 U.S. Code Cong. & Ad. News 2730, 2732; H. Seidman, Our Territorial Dilemma, reprinted in 106 Cong. Rec. 2010 (1960); House Report 1521, 90th Cong., 2d Sess., Appendix (1968); House Committee on Interior and Insular Affairs, Resource Materials Used in the Preparation of the Report of the Commission on Application of Federal Laws to Guam 182 (Committee print 1952); U.S. Department of State, Bureau of Intelligence & Research, United States and Outlying Areas 9 (Geographic Bulletin No. 5, April 1965). The capitalized form, however, has been used so often to embrace unincorporated areas that whether or not the word is capitalized is not a reliable indication of congressional intent. See, for example, Public Law 90-201, § 2, 81 Stat. 584 (1967), 21 U.S.C. § 601(g); United States v. Villarin Gerena, 553 F.2d 723, 724-26 (1st Cir. 1977); Kanazawa Ltd. v. Sound Unlimited, 440 F.2d 1239 (9th Cir. 1971); and Moreno Rios v. United States, 256 F.2d 68, 71-72 (1st Cir. 1958). See also Garcia v. Friesecke, 597 F.2d 284 (1st Cir. 1979), certiorari denied, 444 U.S. 940 (1979). Indeed, the capitalized form has been used on at least one occasion to include the Trust Territory of the Pacific Islands. See 12 U.S.C. § 1772.

From 1950 until 1968, the Organic Act of Guam, a federal law, provided that "no law of the United States hereafter enacted shall have any force or effect within Guam unless specifically made applicable by an Act of Congress either by reference to Guam by name or by reference to 'possessions.'"* Act of August 1, 1950, c.512, § 25(b), 64 Stat. 390, 48 U.S.C.A. § 1421c(b) (1952), repealed by Public Law 90-497, § 7, 82 Stat. 842 (September 11, 1968).

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*"The word "possession" is not a word of art, descriptive of a recognized geographical or governmental entity." Vermilya-Brown Co. v. Connell, 335 U.S. 377, 386 (1948) (holding a military base in Bermuda leased from Great Britain a possession of the United States for purposes of Fair Labor Standards Act). But see the concurring opinions of Justices Frankfurter and Jackson in United States v. Spelar, 338 U.S. 217, 222, 224 (1949).

Accordingly, federal legislation enacted during this period and made applicable to the "Territories" or "territories" of the United States should be presumed inapplicable to Guam, unless a clear intent to override the provisions of the Organic Act in the later legislation can be shown.

The legislative history of the statute repealing the requirement that federal legislation applicable to Guam specifically name Guam or refer to "possessions" does not explain why the requirement was eliminated. The term "possession" may have been thought pejorative, demeaning to the people of Guam and carrying a connotation of imperialism.* See letter from Judge Albert B. Maris to Senator Hugh Butler (April 19, 1954), reprinted in Senate Report 1271, 83d Cong., 2d Sess., in turn reprinted in 1954 U.S. Code Cong. & Ad. News 2609-10 (suggesting that "possession" not be used to describe the Virgin Islands).

Many federal laws will be found applicable to Guam because Guam is specifically named, or because they apply to all "territories and possessions of the United States" or to all areas "under the jurisdiction of the United States," phrases that clearly include Guam. Except for the presumption that legislation enacted between 1950 and 1968 is not applicable to Guam unless Guam or the "possessions" of the United States are specifically named, no general rules govern the applicability of other statutes to Guam. Whether Guam comes within a given congressional act "depends upon the character and aim of each act." Garcia v. Friesecke, 597 F.2d 284, 293 (1st Cir. 1979), certiorari denied, 444 U.S. 940 (1979), quoting Puerto Rico v. Shell Co., 302 U.S. 253, 258 (1937).

Guam and the Virgin Islands are unincorporated but organized territories of the United States. A statute's applicability to Guam may be inferred from the statute's applicability to the Virgin Islands. If a statute applies to the Virgin Islands by name,** but does not mention Guam, it should be presumed inapplicable to Guam under the general rule of statutory construction that mention of one or more items (for example, the Virgin Islands) in a category (the unincorporated but organized territories of the United States) implies the exclusion of all items in that category not specifically mentioned (Guam). See 2A Sutherland, Statutes and Statutory

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*The requirement was included in the same section of the Organic Act that created the Commission on Application of Federal Laws to Guam. By 1968 that Commission had long since completed its work, so the section may have been repealed as surplusage without attention to its other provision.

**See also 48 U.S.C. §§ 1405c(b)-(d), 1574(c), specifying the applicability of certain federal laws to the Virgin Islands.

Construction § 47.23 (4th ed. Sands 1973). If the statute's geographic applicability is not defined in the statute but an exception from some or all of the statute's requirements is made for the Virgin Islands, the statute may be presumed applicable to, at least, unincorporated but organized territories. Otherwise, no exception would be necessary. See, for example, 21 U.S.C. § 104. A court's holding that a statute is applicable to the Virgin Islands, in the absence of contrary statutory language, is authority for application of the statute to Guam.

Whenever conclusions are to be drawn regarding a statute's applicability to Guam based on its applicability to the Virgin Islands, care must be taken to establish that Guam and the Virgin Islands shared the same status at the time the statute was enacted.*

Statutory language and judicial decisions addressing the applicability of a statute to Puerto Rico, American Samoa, or other areas within the jurisdiction of the United States but not part of any State may be of some assistance in determining a statute's applicability to Guam. Because these other areas share only some juridical characteristics with Guam, these authorities are generally less persuasive than those addressing the applicability of a statute to the Virgin Islands.

Useful references in determining the applicability of particular federal laws to Guam are the Report of the Commission on the Application of Federal Laws to Guam, House Document 212, 82d Cong., 1st Sess. (1951); House Committee on Interior and Insular Affairs, Resource Materials Used in the Preparation of the Report of the Commission on Application of Federal Laws to Guam (Committee print 1952); and Leibowitz, The Applicability of Federal Law to Guam, 16 Virginia Journal of International Law 21 (1975). See also Green, Applicability of American Laws to Overseas Areas Controlled by the United States, 68 Harvard Law Review 781 (1955).

Statutes enacted after January 9, 1978. Determining the applicability to the Northern Mariana Islands of statutes enacted

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*Guam was acquired by the United States in 1898, the Virgin Islands in 1917. The Organic Act of Guam was enacted in 1950. 64 Stat. 384. The original Organic Act of the Virgin Islands, since revised, was enacted in 1936. 49 Stat. 1807. See also Richardson v. Electoral Boards, 1 V.I. 301, 332-33 (D.V.I. 1936), cited with approval in Hayes v. Virgin Islands, 392 F. Supp. 48, 49 (D.V.I. 1975), holding that the Virgin Islands has been an organized but unincorporated territory since its acquisition in 1917. This holding is inconsistent, however, with the dictum of the Supreme Court that a territory becomes "organized" when Congress enacts an organic act for that territory. United States v. Standard Oil Co., 404 U.S. 558, 559 n.2 (1972).

after January 9, 1978, that are not amendments of statutes enacted prior to that date is relatively simple. Section 105 of the Covenant establishes a rule of statutory construction: ". . . if . . . legislation cannot also be made applicable to the several States the Northern Mariana Islands must be specifically named therein for it to become effective in the Northern Mariana Islands." Thus, such a statute will not apply to the Northern Mariana Islands if the Northern Mariana Islands is not specifically named in the statute and the statute is not applicable to the several States.

The Marianas Political Status Commission (MPSC) explained the purpose of section 105's rule of construction in these terms:

> [S]ince the power of the Congress with respect to a commonwealth, such as the Commonwealth of the Northern Marianas, is, at least in theory, broader than Congress' power with respect to a state, special precautions have been taken in Section 105. Article IV, Section 3, Clause 2 will continue to be the mechanism through which the Congress will legislate with respect to the Northern Marianas. But Section 105 provides that laws which Congress could not also make applicable to a state cannot be made applicable to the Northern Marianas, unless the Northern Marianas is specifically named in the legislation. This assures that Congress will exercise its special authority under Article IV, Section 3, Clause 2 purposefully, after taking into account the particular circumstances existing in the Northern Marianas . . . .
>
> It is the view of the MPSC that as a practical matter this wording of Section 105, combined with the recognition of the right of local self-government in Section 103 and the other provisions of Article I, provide adequate assurances that federal legislation will not be made applicable unless it is appropriate. Much federal legislation, of course, is highly desirable and should be made applicable to the Northern Marianas. In particular, those laws which provide federal programs and financial aid will be of great assistance to the people of the Northern Marianas. The United States has made clear on many occasions its intent to exercise its powers with respect to the Northern Marianas with strict regard for the right of local self-government, as it must in view of Section 103. In recent decades at least, the United States has in fact followed this policy with respect to the territories and the Commonwealth of Puerto Rico.
>
> Neither the Commonwealth of Puerto Rico nor any territory has the express protection contained in Section 105; they can be affected by federal legislation which could not be made applicable to a state even if they are

> not named in that legislation. Indeed, American Samoa and the Trust Territory of the Pacific Islands are now wholly run by the Executive Branch of the federal government and they can be affected not only by a wide variety of federal legislation but also by executive orders over which they have no control. This will not be true with respect to the Commonwealth of the Northern Marianas. It will not even be true prior to the establishment of the Commonwealth, for Section 105 comes into effect before termination of the Trusteeship.

Marianas Political Status Commission, Section by Section Analysis of the Covenant 14-16 (1975).

If a statute enacted after January 9, 1978, by its own terms applies to the Northern Mariana Islands, no problems of statutory construction arise. By the statute's own terms and consistently with section 105 of the Covenant, the statute is applicable to the Northern Mariana Islands.

After termination of the trusteeship, the Northern Mariana Islands will be a territory or possession of the United States. Nonetheless, section 105 requires that legislation enacted after January 9, 1978, that is not applicable to the several States, name the Northern Mariana Islands specifically in order to be applicable there. Accordingly, a post-January 9, 1978, statute applicable to the territories and possessions of the United States but not to the several States is not applicable to the Northern Mariana Islands. Even though the later statute would apply to the Northern Mariana Islands but for section 105, the more specific provisions of section 105 control. See Busic v. United States, 446 U.S. 398, 406 (1980); West India Oil Co. v. Domenech, 311 U.S. 20, 29 (1940); Lavergne v. United States Casualty Co., 259 F.Supp. 425 (D.P.R. 1966); 2A Sutherland, Statutes and Statutory Construction § 51.05 (4th ed. Sands 1973).*

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*This conclusion applies with even greater force in the case of such statutes enacted after January 9, 1978, but prior to termination of the trusteeship. Prior to termination, the statute is inapplicable because the Northern Mariana Islands is not then a territory or possession. World Communications Corp. v. Micronesian Telecommunications Corp., 456 F. Supp. 1122, 1125 (D. Hawaii 1978). After termination, the question becomes: Did Congress intend the phrase, "territories and possessions," to apply to areas, such as the Northern Mariana Islands, that subsequently become territories or possessions of the United States? See Puerto Rico v. Shell Oil Co., 302 U.S. 253, 257 (1937); United States v. Villarin Gerena, 553 F.2d 723, 724-26 (1st Cir. 1977). For the Northern Mariana Islands, section 105 of the Covenant provides a clear negative response to that question.

Section 105 of the Covenant does not supply a rule of decision for statutes enacted after January 9, 1978, that by their terms are applicable to the several States but not specifically to the Northern Mariana Islands. Determining whether such a statute applies to the Northern Mariana Islands involves, first, examination of the language of the statute. The language, for example, may show that the statute is applicable to the "territories and possessions of the United States," a phrase that after termination of the trusteeship will include the Northern Mariana Islands. Or the language may show that the statute encompasses all areas "subject to the jurisdiction of the United States." See, for example, 15 U.S.C. § 1127. Even prior to termination of the trusteeship, the Northern Mariana Islands is subject to the jurisdiction of the United States. See Trusteeship Agreement, Art. 3; Covenant §§ 101, 1003(c).

In the absence of specific language in the statute under examination, resort must be had to the usual methods for determining the intent of Congress in enacting legislation to determine whether the statute is applicable to the Northern Mariana Islands.

Determining congressional intent. A statute's legislative history is the principal source for expressions of legislative intent. Prior judicial construction of the statute and administrative agency practice may also be helpful in determining whether the statue is applicable to the Northern Mariana Islands. The normal rules of statutory construction apply. See generally 2A Sutherland, Statutes and Statutory Construction §§ 45.01 et seq. (4th ed. Sands 1973).

In addition, courts have fashioned a few more specific guides. For example, when the extent of a statute's applicability is not clear from the language of the statute, the statute and its legislative history should be examined to determine whether, in enacting the statute, Congress intended to exert all the power it possessed with respect to the subject matter of the statute. In United States v. Standard Oil Co., 404 U.S. 558 (1972), the Supreme Court found that Congress intended the Sherman Antitrust Act to apply in American Samoa, even though the United States had not yet acquired American Samoa at the time the Sherman Act became law, because Congress intended to exert all its powers with respect to trade and commerce in enacting the Sherman Act. Those powers subsequently extended to American Samoa, so the Court found the Act applicable there. See also Puerto Rico v. Shell Co., 302 U.S. 253 (1937), relied upon in the Standard Oil case, concluding on the same rationale that the Sherman Act applies in Puerto Rico; Kanazawa Ltd. v. Sound, Unlimited, 440 F.2d 1239 (9th Cir. 1971), citing the comprehensive language of the Arbitration Act in concluding that statute to be applicable in Guam; and Van Camp Sea Food Co., 212 N.L.R.B. 537 (1974), concluding that Congress intended to exercise fully its powers over commerce in enacting the National Labor

Relations Act and that the Act was consequently applicable in American Samoa.

Some statutes define "United States" or "State" to include Guam and/or the Northern Mariana Islands, but in their operative terms refer to neither the United States nor the States. See, for example, 12 U.S.C. §§ 1749 et seq. and, especially, § 1749c(e). The Commission has concluded that inclusion of Guam or the Northern Mariana Islands in the definition of "United States" or of "State" generally indicates a congressional intention that the statute apply in those areas.

> When a general law expressly mentions . . . [a particular jurisdiction], it can hardly be contended that Congress did not have [that jurisdiction] in mind when it passed the law.

Rubenstein v. United States, 153 F.2d 127, 129 (D.C. Cir. 1946). See also People of Enewetak v. Laird, 353 F.Supp. 811, 815 (D. Hawaii 1973).

If no congressional intent either to apply or not to apply a particular statute to the Northern Mariana Islands can be discerned, the statute is presumed inapplicable to the Northern Mariana Islands. See Allen v. United States, 47 F.2d 735, 736 (3d Cir. 1931); United States v. Gancy, 54 F.Supp. 755, 757 (D. Minn. 1944), affirmed, 149 F.2d 788 (8th Cir. 1945), certiorari denied, 326 U.S. 767 (1945); 22 Op. Att'y Gen. 268, 269 (1898). See also Rasmussen v. United States, 197 U.S. 516, 523 (1905); Munoz v. Porto Rico Railway Light & Power Co., 83 F.2d 262, 266 (1st Cir. 1936), certiorari denied, 298 U.S. 689 (1936); Nagle v. United States, 191 Fed. 141, 143, 146 (9th Cir. 1911); People of Enewetak v. Laird, 353 F. Supp. 811, 815 (D. Hawaii 1973). But see Hayes v. Virgin Islands, 392 F. Supp. 48, 49 (D.V.I. 1975).

Determining congressional intent--a note on nomenclature. The Covenant establishes the Northern Mariana Islands as a "commonwealth."

> The term "commonwealth" is not a word describing any single kind of political relationship or status. A number of the States of the Union, including Virginia, Massachusetts and Kentucky, have the official name of Commonwealth. The same title is or was held by political entities as dissimilar as England under the Cromwells, Australia, Puerto Rico, and the Philippines during the ten-year period preceding their independence. The choice of the term "commonwealth" for the Northern Mariana Islands therefore does not denote any specific status . . . .

Senate Report 94-433, The Covenant to Establish a Commonwealth of the Northern Mariana Islands 65 (1975).

The Northern Mariana Islands technically will not become a "commonwealth" until termination of the trusteeship. Covenant §§ 101, 1003(c). Nonetheless, the Northern Mariana Islands is already frequently referred to as "the Commonwealth of the Northern Mariana Islands," particularly by public officials and other persons in the Northern Mariana Islands. See Constitution of the Northern Mariana Islands, Schedule on Transitional Matters § 9; Northern Mariana Islands Constitutional Convention, Analysis of the Constitution of the Commonwealth of the Northern Mariana Islands 209 (1976). In making federal statutes applicable to the Northern Mariana Islands, Congress has employed both "the Northern Mariana Islands" and "the Commonwealth of the Northern Mariana Islands." Compare, for example, 15 U.S.C. § 4002(a)(5), (6); 16 U.S.C. § 1453(4); 26 U.S.C. § 4612(a)(4)(A); 33 U.S.C. § 151(c); 42 U.S.C. §§ 6903(31), 9102(15); and 46 U.S.C. § 1452(10), all referring to "the Commonwealth of the Northern Mariana Islands," with, for example, 16 U.S.C. § 1632(13); 20 U.S.C. § 3610(8); and 42 U.S.C. §§ 3022(6), 7835(b), which do not use the term "Commonwealth." No intent to postpone applicability to the Northern Mariana Islands of statutes employing the term "Commonwealth" until termination of the trusteeship is discernible.*

Some legislation enumerates the areas to which it is applicable in this fashion:

> The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and any other Commonwealth, territory, or possession of the United States.

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*But see Public Law 96-351, 94 Stat. 1161 (1980), authorizing citizens of the Northern Mariana Islands to enlist in the Armed Forces of the United States. This statute expires "upon the establishment of the Commonwealth of the Northern Mariana Islands," because it will not be necessary after termination of the trusteeship, when citizens of the Northern Mariana Islands will become citizens of the United States and will no longer need the special authority of this statute to enlist in the Armed Forces. Here, "upon the establishment of the Commonwealth" clearly means on and not before termination of the trusteeship. See Senate Report 96-851, at 2 (1980).

See also section 460l-8(b)(5) of title 16, U.S.C., providing that "the District of Columbia, Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands (when such islands achieve Commonwealth status) shall be treated collectively as one State" for purposes of receiving certain land and water conservation funds.

> The term "United States", when used in a geographical context, means all the States thereof.

16 U.S.C. § 1802(21), (24) (Fishery Conservation and Management Act). See also 19 U.S.C. § 2571(15), (17) (Trade Agreements Act); 30 U.S.C. § 1403(13) (Deep Seabed Hard Mineral Resources Act). The reference to "any other Commonwealth" could be deemed a reference to the Northern Mariana Islands, since it is the only foreseeable "commonwealth" other than Puerto Rico, already specifically mentioned in the definition.* If the intent is to include the Northern Mariana Islands, a second question arises: Is the Northern Mariana Islands included immediately or only on termination of the trusteeship, when it becomes a commonwealth under the terms of the Covenant. This question has not yet been authoritatively answered.**

Future legislation. Any statutory formula for determining the applicability of federal statutes to the Northern Mariana Islands is subject to modification by later statute.*** Determining whether a

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*But see section 3371(h) of title 16, U.S.C.: "The term 'State' means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, Northern Mariana Islands, American Samoa, and any other territory, commonwealth, or possession of the United States."

**Congressman Robert L. Leggett, then chairman of the Subcommittee on Fisheries and Wildlife Conservation and the Environment of the House Committee on Merchant Marine and Fisheries, in a November 4, 1977, letter to Congressman Phillip Burton, then chairman of the Subcommittee on Territorial and Insular Affairs of the House Committee on Interior and Insular Affairs, stated that the Fishery Conservation and Management Act was intended to become applicable to the Northern Mariana Islands when it "officially [became] a Commonwealth," that is, on termination of the trusteeship. (A copy of this letter is in the court file in Marianas Fisheries, Inc. v. Kreps, District Court for the Northern Mariana Islands, Civil No. 79-031.) But see House Report 97-549, at 17 (1982), stating that the Fishery Conservation and Management Act became applicable to the Northern Mariana Islands on January 9, 1978, by operation of section 502(a)(2) of the Covenant, since it was applicable to Guam and the several States on that date.

***The power of the United States Congress to enact legislation affecting the territories is granted by Article IV, Section 3, Clause 2 of the United States Constitution and is plenary, restricted only by other provisions in the Constitution itself. Although the Northern Mariana Islands is denominated a Commonwealth, it is subject to the powers of Congress under Article IV, Section 3, Clause 2.

later statute is intended to modify, for the purposes of that statute alone, the applicability provisions of the Covenant could conceivably be difficult, although few such problems have been encountered. Section 105 and Article V of the Covenant provide generally satisfactory formulae for determining the applicability of federal laws to the Northern Mariana Islands. For most federal statutes, applicability can be determined quickly and with little difficulty. In any case, no legislative remedy can anticipate such problems, since that remedy would itself be susceptible to problems created by yet later legislation.

In its general recommendations, the Commission urges that the Covenant, although having the status of a federal statute, be afforded an especial deference in keeping with its constitutional importance to the people of the Northern Mariana Islands. Only when there is clear and convincing evidence of congressional intent to override Covenant provisions on the applicability of federal laws should a federal law be found applicable to the Northern Mariana Islands when the Covenant says it should not be, or should a federal law be found inapplicable to the Northern Mariana Islands when the Covenant says it should apply there.

The Commission also suggests, in its general recommendations, that checklists used by Congress in legislative drafting incorporate a reminder to consider inclusion of geographic applicability provisions in the same routine manner as severability and effective date provisions are considered. Specific listing of the jurisdictions to which a federal statute is to apply is the surest means of avoiding later controversy and confusion over the statute's geographic reach. Language extending a statute "to all areas under the jurisdiction of the United States" ensures the broadest geographic reach, when that is the intention of Congress.

RECOMMENDATIONS

GENERAL RECOMMENDATIONS

The mandate of this Commission is to recommend to Congress which laws of the United States not applicable to the Northern Mariana Islands should be made applicable to the Northern Mariana Islands and to what extent and in what manner and which applicable laws should be inapplicable and to what extent and in what manner. In conformity with this mandate, most of the recommendations in this report are concerned with specific federal laws. During the course of its deliberations, however, the Commission has decided to make three general recommendations to guide Congress in applying particular federal legislation to the Northern Mariana Islands.

Two of the Commission's general recommendations go to the very heart of the relationship between the Northern Mariana Islands and the United States. First, the Commission recommends that Congress continue to regard the Northern Mariana Islands as the beneficiary of a trust relationship with the United States, even after termination of the trusteeship. Second, the Commission recommends that Congress not enact any legislation to amend or repeal provisions of the Covenant, except in accordance with the mutual consent and consultation provisions of sections 105 and 902 of the Covenant.

The Commission's third general recommendation is procedural. The Commission recommends that Congress, in enacting any statute, routinely consider inclusion of a provision enumerating the jurisdictions to which the statute applies.

Each of the three general recommendations is discussed below.

The continuing trust relationship.

The Commission recommends that Congress continue to regard the Northern Mariana Islands as beneficiary of a trust relationship with the United States, even after termination of the trusteeship agreement.

The Northern Mariana Islands is now administered by the United States as part of the international trusteeship system established under Article 75 of the United Nations Charter. Trusteeship Agreement, Arts. 1, 2. The Northern Mariana Islands will become a full-fledged commonwealth of the United States only on termination of that trusteeship. Covenant §§ 101, 1003(c).

When the trusteeship is terminated, the existing trust relationship should be replaced by a new trust relationship that involves only the United States and the Northern Mariana Islands. The United Nations will no longer be a participant. The new trust

relationship is not based upon any particular document,* but on the notion that whenever a "discrete and insular minority"** does not have full access to the political processes that establish government policy, the government owes an especial standard of care to that minority.***

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*Article 73 of the United Nations Charter, however, does provide that: "Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories . . . ."

**See United States v. Carolene Products Co., 304 U.S. 144, 153 n.4 (1938).

***"Speaking in the [British] House of Commons on December 1, 1783, during the consideration of Fox's India Bill, [Edmund] Burke expressed the 'trusteeship' principle of colonialism in the following manner:

> 'All political power which is set over men, and . . . all privilege claimed or exercised in exclusion of them, being wholly artificial, and for so much a derogation from the natural equality of mankind at large, ought to be in some way or other exercised ultimately for their benefit.
>
> 'If this is true with regard to every species of political dominion, and every description of commercial privilege, none of which can be original self-derived rights, or grants for the benefit of the holders, then such rights or privileges, or whatever else you choose to call them, are all, in the strictest sense, a trust; and it is of the very essence of every trust to be rendered accountable; and even totally to cease, when it substantially varies from the purposes for which alone it could have a lawful existence.'

Thus did Burke insist that the possession of political power implied a duty towards the subjected people, a duty to exercise this political power for their benefit." C. Toussaint, The Trusteeship System of the United Nations 6 (1956) (citation omitted).

The Northern Mariana Islands does not now have, nor will it have on termination of the trusteeship, full access to the political processes that establish national government policy. United States citizens residing in the Northern Mariana Islands are not entitled to vote for President or Vice President of the United States. The Northern Mariana Islands are not represented by voting members in the United States Senate or House of Representatives.

The inhabitants of the Northern Mariana Islands are among the most vulnerable of all groups to the operation of the majoritarian process at the national level. They comprise less than one hundredth of one percent of the national population. They live more than three thousand miles from the nearest State of the United States, Hawaii. Their traditional culture is distinct. Their per capita income is much below average per capita income in the poorest of the fifty States. Unless and until the inhabitants of the Northern Mariana Islands are entitled to full participation in the national political process, the trust relationship is appropriate.

The fiduciary nature of the relationship between the United States Government and the American Indians has long been established, although no treaties or documents specifically state that the relationship is fiduciary in nature. See, for example, United States v. Mitchell, -- U.S.--, 77 L.Ed. 2d 580, 596 (1983); Seminole Nation v. United States, 316 U.S. 286, 296-97 (1942).

In Carino v. Insular Government of the Philippine Islands, 212 U.S. 449 (1909), Mr. Justice Holmes applied similar standards, although without articulation of the fiduciary concept, in discussing the relationship between the United States-administered government of the Philippines and the inhabitants of those islands. See also Cincinnati Soap Co. v. United States, 301 U.S. 308, 314 (1937) (quoting Elihu Root on the American administration of the Philippines: "it is our unquestioned duty to make the interests of the people over whom we assert sovereignty the first and controlling consideration in all legislation and administration which concerns them"); Reavis v. Fianza, 215 U.S. 16 (1909) ("especially must [the United States] be supposed to have had in view the natives of the islands, and to have intended to do liberal justice to them"); Neely v. Henkel, 180 U.S. 109, 120 (1901) (characterizing Cuba under United States rule following the Spanish American War as a territory held in trust for its inhabitants).

The trust relationship between the United States and the Northern Mariana Islands should not come into existence as a corollary of the broad constitutional powers the United States possesses with respect to territories and possessions of the United

States.* Indeed, in approving the Covenant with the Northern Mariana Islands, the United States has voluntarily relinquished powers routinely exercised with respect to other, earlier-acquired territories and possessions. Compare Mormon Church v. United States, 136 U.S. 1, 43 (1890), with Covenant §§ 102, 103, 105, 201, 202, 501.

Neither should the trust relationship between the United States and the Northern Mariana Islands be based on any outdated notion that the inhabitants of the Northern Mariana Islands are somehow "backward," incapable of finding their way in the modern world without the tutelage of an advanced nation.**

Rather, the trust relationship between the United States and the Northern Mariana Islands should be founded on one concept and one concept alone: so long as the citizens of the United States residing in the Northern Mariana Islands are not able to participate fully in the representative democracy that is the United States, by enjoying with other citizens of the United States the right to vote for President and Vice President of the United States and for Senators and Representatives in the United States Congress and by otherwise sharing the same rights enjoyed by the citizens of the several States, the United States must treat those inhabitants of the Northern Mariana Islands as a trustee does the beneficiaries of a trust.***

In practical terms, the trust relationship means that Congress, in determining whether or not to apply particular federal legislation

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*See Choctaw Nation v. United States, 119 U.S. 1, 27-28 (1886); United States v. Kagama, 118 U.S. 375, 383-84 (1886).

**See United States v. Chavez, 290 U.S. 354, 361 (1933); Ex Parte Crow Dog, 109 U.S. 556, 568-69, 571 (1883). See also C. Touissaint, The Trusteeship System of the United Nations 5 (1956); Q. Wright, Mandates Under the League of Nations 8-23 (1930).

***The Commission does not suggest that it is wrong that citizens of the United States residing in the Northern Mariana Islands be treated differently than citizens of the United States residing in one of the several States. The role of the States in our federal system, coupled with the small population of the Northern Mariana Islands, makes impractical at this time full and effective participation in national political processes by citizens of the United States residing in the Northern Mariana Islands. See generally the Commission's recommendation, A nonvoting delegate to the United States Congress.

Neither does the Commission intend to suggest that the United States has acted in the past toward the Northern Mariana Islands other than as a trustee might act toward the beneficiary of a trust.

to the Northern Mariana Islands, should consider the interests of the inhabitants of the Northern Mariana Islands as paramount. Congress should be particularly sensitive, when enacting legislation affecting the Northern Mariana Islands, to the promises made by the United States in sections 701 and 703 of the Covenant. In section 701 the United States promises to "assist the Government of the Northern Mariana Islands in its efforts to achieve a progressively higher standard of living for its people as part of the American economic community and to develop the economic resources needed to met the financial responsibilities of local self-government." In section 703 the United States promises to "make available to the Northern Mariana Islands the full range of federal programs and services available to the territories of the United States."

More generally, the trust relationship requires that Congress be sensitive to the impact of new legislation on any part of the Covenant. And, in interpreting the Covenant, "all possible ambiguities should be resolved in favor of and to the benefit of the people and government of the Northern Mariana Islands." 122 Cong. Rec. 7272 (1976) (statement of Representative Burton, floor manager and a principal sponsor of legislation approving the Covenant).

* * *

Sanctity of the Covenant.

The Commission urges Congress not to enact any legislation to amend or repeal provisions of the Covenant, except in accordance with the mutual consent and consultation provisions of sections 105 and 902 of the Covenant.

The Covenant establishes an entirely new relationship between that part of the United States organized into States of the Union and an area outside of those States.* In one respect the Covenant resembles a treaty, in that it was negotiated between the United States and a people not under the sovereignty of the United States.** Formally, however, the Covenant was approved for the United States

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*"[T]he political, legal, and social precedents to be established with approval of the Marianas Covenant are salient. Foremost, a new system of local government, unique in the annals of U.S. history, will be enacted." 121 Cong. Rec. 23662, 23669-70 (1975) (statement of Representative Clausen, cosponsor of legislation approving Covenant and ranking minority member of subcommittee reporting that legislation).

**So long as it is part of the Trust Territory of the Pacific Islands, the Northern Mariana Islands is not under the sovereignty of the United States. Brunell v. United States, 77 F. Supp. 68, 70 (S.D.N.Y. 1948).

not as a treaty with the advice and consent of two-thirds of the United States Senate, but by a joint resolution of the United States Congress, which, when signed by the President, became a public law of the United States. Further, when all parts of the Covenant become effective, on termination of the trusteeship, the Northern Mariana Islands will come under the sovereignty of the United States. Covenant §§ 101, 1003(c). From that time forward, the Covenant will no longer be an agreement between the United States and a people not under the sovereignty of the United States.

If promises in a treaty are not kept, the offended nation may repudiate the treaty and go its separate way. See, for example, G. Schwarzenberger & E. Brown, A Manual of International Law 137 (6th ed. 1976). If the United States after termination of the trusteeship should fail to keep a promise made in the Covenant, the people of the Northern Mariana Islands have no such alternative. They have thrown in their lot with the United States for good or for ill and can rely only on the political institutions of the United States for justice.

Traditionally, territories and possessions of the United States have been governed pursuant to Article IV, Section 3, Clause 2, of the United States Constitution:

> The Congress shall have Power to dispose of and make all needful Rules and Regulations respecting the Territory or other Property belonging to the United States . . . .

The powers of Congress under this clause are plenary and far-reaching.* On termination of the trusteeship, the Northern Mariana Islands will be subject to those powers.**

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*"Congress may not only abrogate laws of the territorial legislatures, but it may itself legislate directly for the local government. It may make a void act of the territorial legislature valid, and a valid act void. In other words, it has full and complete legislative authority over the people of the Territories and all the departments of the territorial governments." Mormon Church v. United States, 136 U.S. 1, 43 (1890), quoted in Inter-Island Steam Navigation Co. v. Territory of Hawaii, 305 U.S. 306, 314 (1938). See also Examining Board of Engineers, Architects, and Surveyors v. Flores de Otero, 426 U.S. 572, 586 n. 16 (1976).

The territorial clause in the Constitution of the United States was drafted by Gouverneur Morris. In a letter some years later responding to an inquiry as to the meaning of the clause, Morris stated that, as to territories acquired after adoption of the Constitution, "it would be proper to govern them as provinces, and allow them no voice in our councils." The letter is quoted in the opinion of Justice Campbell in the Dred Scott case, Scott v. Sandford, 60 U.S. 393, 493, 507 (1856).

Congressional power over the territories has also been found to arise as a consequence of sovereignty. DeLima v. Bidwell, 182 U.S. 1, 196-97 (1901); United States v. Kagama, 118 U.S. 375, 380 (1886). Whether congressional authority is based on Article IV, Section 3, Clause 2, of the Constitution or on the inherent rights of the sovereign is irrelevant in determining the scope of that power. National Bank v. Yankton, 101 U.S. 129, 132-33 (1880); American Insurance Co. v. Canter, 26 U.S. (1 Pet.) 511, 542 (1828).

**Report of the Joint Drafting Committee on the Negotiating History of the Covenant, at C-2 (1975) (regarding section 105), reprinted at Hearings before the Subcommittee on Territorial and Insular Affairs of the House Committee on Interior and Insular Affairs on H.J. Res. 549 et al. to Approve the "Covenant to Establish a Commonwealth of the Northern Mariana Islands," 94th Cong., 1st Sess. 374, 375 (1975); Senate Report 94-596, at 2, 15 (1976); Senate Report 94-433, at 67 (1975); 122 Cong. Rec. 3775 (statement of Senator Burdick), 4016 (statement of Senator McGee), 4203 (statement of Senator Fannin) (1976); Leibowitz, United States Federalism: The States and the Territories, 28 American University Law Review 449, 468 (1979).

Further, from the standpoint of the United States, the Covenant is simply a law of the United States. American jurisprudence recognizes no category of laws inferior to the Federal Constitution but superior to laws and treaties of the United States. A law of the United States is generally subject to amendment or repeal by a later law of the United States. 1A Sutherland, Statutes and Statutory Construction §§ 23.03, 23.09 (C. Sands ed. 1972).*

Despite the plenary powers of Congress under the Constitution and despite the general power of Congress to amend earlier legislation in later legislation, the Covenant is intended to bind both the United States and the Northern Mariana Islands. The preamble of the Covenant states:

> This Covenant will be mutually binding when it is approved by the United States, by the Mariana Islands District Legislature and by the people of the Northern Mariana Islands in a plebiscite, constituting on their part a sovereign act of self-determination.

The mutually binding character of the Covenant is emphasized in its section 903, which provides that "the undertakings by the Government of the United States and by the Government of the Northern Mariana Islands provided for in this Covenant will be enforceable in [courts established by the Constitution or laws of the United States.]"

Some provisions of the Covenant are intended to be more binding than others. Section 105 of the Covenant identifies certain provisions of the Covenant as fundamental and provides with respect to those provisions that: "In order to respect the right of self-government guaranteed by this Covenant the United States agrees to limit the exercise of [its authority to enact legislation in accordance with its constitutional processes which will be applicable to the Northern Mariana Islands] so that the fundamental provisions of this Covenant . . . may be modified only with the consent of the Government of the United States and the Government of the Northern Mariana Islands." The fundamental provisions are identified, in section 105, as Article I (political relationship), Article II (constitution of the Northern Mariana Islands), Article III (citizenship and nationality), section 501 (applicability of United States Constitution), and section 805 (restriction on alienation of land).

Section 105 of the Covenant is intended to limit permanently the otherwise plenary power of Congress under Article IV, Section 3,

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*Even if the Covenant is characterized as a treaty, the same result holds. A treaty is subject to amendment or repeal by a later act of Congress. 2 Sutherland, Statutes and Statutory Construction § 36.07 (C. Sands ed. 1973).

Clause 2, of the Constitution to enact legislation modifying the fundamental provisions of the Covenant.*

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*Senate Report 94-596, at 19, 23 (1976) (minority views of Senators Stennis, Cannon, H. Byrd, G. Hart, and Scott); Senate Report 94-433, at 66 (1975); U.S. Dep't of Justice, Explanation of the Covenant (1975), reprinted at Hearings before the Subcommittee on Territorial and Insular Affairs of the House Committee on Interior and Insular Affairs on H.J. Res. 549 et al. to Approve the "Covenant to Establish a Commonwealth of the Northern Mariana Islands," 94th Cong., 1st Sess. 384 (1975); Marianas Political Status Commission, Section by Section Analysis of the Covenant, reprinted in the forecited Hearings, at 626, 630-32. See also the forecited Hearings, at 413 (statement of Representative Burton), 623, 625 (statement of Edward DLG. Pangelinan, chairman of the Marianas Political Status Commission); 121 Cong. Rec. 39592, 42116 (1975) (statements of Senator G. Hart).

One prominent authority on the application of federal law to the territories of the United States has described section 105 as "a unique, specific limitation on Congress' territorial clause authority." Leibowitz, The Marianas Covenant Negotiations, 4 Fordham International Law Journal 19, 29 (1980). See also id. at 79: "The Covenant clearly articulates the need for Northern Marianas approval prior to federal action. This was the first time in the history of United States territorial affairs that the federal government agreed to an unambiguous limitation on its power."

Section 14 of the Ordinance of 1787, 1 Stat. 51 note, establishing a framework for the governance of the Northwest Territories, provided that certain of the articles in the ordinance were to "be considered as articles of compact, between the original States and the people and States in the said territory, and forever remain unalterable, unless by common consent." Early cases held that, even after the adoption of the Constitution two years later and the subsequent achievement of statehood by those territories, those articles remained binding on both the United States and those States, unless modified by mutual consent. See, for example, Spooner v. McConnell, 22 F. Cas. 939 (C.C.D. Ohio 1838) (No. 13,245) (opinion by Justice McLean of the U.S. Supreme Court, sitting as Circuit Justice); Scott v. Detroit Young Men's Society's Lessee, 1 Douglass 119 (Mich. 1843); Hogg v. Zanesville Canal & Manufacturing Co., 5 Ohio 410 (1832). Later cases, however, held the admission of those States into the Union constituted mutual consent to abrogation of the binding provisions of the Ordinance of 1787. See Sands v. Manistee River Improvement Co., 123 U.S. 288, 295-96 (1887); Huse v. Glover, 119 U.S. 543, 546 (1886); Van Brocklin v. Tennessee, 117 U.S. 151, 159 (1886); Escanaba Co. v. Chicago, 107 U.S. 678, 688 (1882). See also Economy Light & Power Co. v. United States, 256 U.S. 113, 120 (1921).

The ability of the Ninety-fourth Congress, in approving the Covenant, to limit the powers of future Congresses under Article IV, Section 3, Clause 2, of the Constitution is not altogether free from doubt. See Note, Inventive Statesmanship vs. the Territorial Clause: The Constitutionality of Agreements Limiting Territorial Powers, 60 Virginia Law Review 1041 (1974).* The report on the Covenant by the Senate Committee on Interior and Insular Affairs and the explanation of the Covenant prepared by the United States Department of Justice each cite one of the Gold Clause cases, Perry v. United States, 294 U.S. 330 (1935), to support the power of the Ninety-fourth Congress, in approving the Covenant, to bind future Congresses.** In the pertinent passage in the Perry case, the Supreme Court of the United States stated:

> [T]he right to make binding obligations is a competence attaching to sovereignty. In the United States, sovereignty resides in the people, who act through the organs established by the Constitution. The Congress as the instrumentality of sovereignty is endowed with certain powers to be exerted on behalf of the people in the manner and with the effect the Constitution ordains. The Congress cannot invoke the sovereign power of the people to override their will as thus declared. The powers conferred upon the Congress are harmonious. The Constitution gives to the Congress the power to borrow money on the credit of the United States, an unqualified power, a power vital to the Government,--upon which in an extremity its very life may depend. The binding quality of the promise of the United States is of the essence of the credit which is so pledged. Having this power to authorize the issue of definite obligations for the payment of money borrowed, the Congress has not been vested with authority to alter or destroy those obligations.

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*Among other arguments pro and con, this Note comments: "If Congress could totally dispose of its power over the Philippines by granting them independence, it seems logical that it could also partially dispose of its powers by granting them something less than complete independence." Id. at 1060.

**Senate Report 94-433, at 67 (1975); U.S. Dep't of Justice, Explanation of the Covenant (1975), reprinted at Hearings before the Subcommittee on Territorial and Insular Affairs of the House Committee on Interior and Insular Affairs on H.J. Res. 549 et al. to Approve the "Covenant to Establish a Commonwealth of the Northern Mariana Islands," 94th Cong., 1st Sess. 384, 385 (1975).

294 U.S. at 353-54.

In other areas, the right of one Congress to bind future Congresses is also recognized. When title to public lands is granted by the Federal Government to an individual pursuant to an Act of Congress, a subsequent Congress may not constitutionally enact legislation divesting that individual of title. United States v. Rowell, 243 U.S. 464, 469 (1917). Once an individual becomes a citizen of the United States, Congress may not enact legislation depriving that individual of his or her citizenship. Afroyim v. Rusk, 387 U.S. 253 (1967). And, in a holding directly relevant to the Northern Mariana Islands, the Supreme Court has stated:

> [W]here the Constitution has been once formally extended by Congress to territories, neither Congress nor the territorial legislature can enact laws inconsistent therewith."

Downes v. Bidwell, 182 U.S. 244, 273 (1901).

There consequently is respectable authority that Congress, in exercising its plenary control over territories of the United States, may grant irrevocably to a territory some of its constitutional powers.*

Regardless of whether Congress has the power to alter the fundamental relationship established between the United States and the Northern Mariana Islands by the Covenant without the consent of the Northern Mariana Islands, it should not attempt to do so. The entire Covenant, and especially the fundamental provisions enumerated

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*The arguments in favor of and against this proposition are set forth in great detail in legal memoranda reproduced in Hearing on the Puerto Rico Federal Relations Act before the Senate Committee on Interior and Insular Affairs, 86th Cong., 1st Sess. 90-123 (1959). See also id. at 19-21, 24, 29-36, 45-53, 62-65, 88-89; Hodgson v. Union de Empleados, 371 F. Supp. 56, 59 n.7 & accompanying text (D.P.R. 1974); Public Papers of the Presidents: John F. Kennedy 1963, at 416 (1964); Magruder, The Commonwealth Status of Puerto Rico, 15 University of Pittsburgh Law Review 1, 14-16 (1953), and the cases there cited; Nader, The Commonwealth Status of Puerto Rico, Harvard Law Record, December 13, 1956, at 2.

in section 105, should be regarded as inviolable. When the Covenant was put to the people of the Northern Mariana Islands, it was on that basis that they voted to become part of the United States.*

> One [basic value that underlies our society] is the "morality of promise-keeping." Mr. Justice Black expressed this value most eloquently: "Great nations, like great men, should keep their word." The Constitution protects this value in the contract clause . . . . More fundamentally, the morality of promise-keeping is "implicit in the concept of ordered liberty." . . . Beyond cavil, one value "basic in our system of jurisprudence" is that a deal is a deal.
>
> . . . For the government to do otherwise [than honor its promises] violates an important tenet, deeply rooted in our legal traditions, that is designed to bond society by encouraging principled relations.

Newton, Federal Power over Indians: Its Sources, Scope, and Limitations, 132 University of Pennsylvania Law Review 195, 262-63 (1984) (citations omitted).

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Specifying geographic applicability.

In enacting a statute, Congress should routinely consider inclusion of a provision enumerating the jurisdictions in which the statute is to apply. Just as persons drafting legislation now routinely consider whether to include a separability provision,** an effective date provision, or an authorization of appropriations, those persons should also consider whether delineation of the geographic applicability of the statute is advisable. Legislative

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*See Office of the Plebiscite Commissioner, The Plebiscite Commissioner Answers Some of Your Questions about the Plebiscite, the Covenant, and the Commonwealth, (1975), reprinted in Hearings before the Subcommittee on Territorial and Insular Affairs of the House Committee on Interior and Insular Affairs on H.J. Res. 549 et al. to Approve the "Covenant to Establish a Commonwealth of the Northern Mariana Islands," 94th Cong., 1st Sess. 503, 514 (1975); Office of the Plebiscite Commissioner, The Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America Explained 2-3 (1975), reprinted in the forecited Hearings at 543, 546-47.

**A separability provision specifies that, in the event part of a statute is declared unconstitutional, the remainder of the statute remains in force. Black's Law Dictionary 1223 (5th ed. 1979). See, for example, 12 U.S.C. § 3716.

drafting checklists used by Senators, Representatives, committees, and staff should include a reminder to ascertain whether the statute's geographic applicability has been adequately specified.

If Congress does not name specifically the jurisdictions in which a statute is applicable, substantial amounts of time and money may be expended in subsequent disputes over the statute's applicability. Costly litigation may result, as it often has in the past when the extent of a federal statute's reach is not clear from the statute's provisions. See, for example, United States v. Standard Oil Co., 404 U.S. 558 (1972); Garcia v. Friesecke, 597 F.2d 284 (1st Cir. 1979), certiorari denied, 444 U.S. 940 (1979); Kanazawa Ltd. v. Sound Unlimited, 440 F.2d 1239 (9th Cir. 1971); Van Camp Sea Food Co., 212 N.L.R.B. 537 (1974). Eventually, Congress may be asked to make specific that which was left uncertain when the statute was enacted. See, for example, Senate Report 987, 85th Cong., 1st Sess. (1957), reprinted at 1957 U.S. Code Cong. & Ad. News 1756-58, explaining Public Law 85-231, § 1(1), 71 Stat. 514 (1957), which overruled Vermilya-Brown Co. v. Connell, 335 U.S. 377 (1948).

Further, the time when legislation is enacted will, in most cases, be the best time to determine whether a statute should apply to any particular area under the jurisdiction of the United States. For example, in some cases application of a statute may be grossly inappropriate to the isolated and insular character of a particular territory.* In other instances, failure to apply a statute to an area under the jurisdiction of the United States may create a loophole.** Routinely considering the geographic applicability of a statute before it is enacted enables Congress to address problems before they become acute.***

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*See, for example, the discussion of the application of motor vehicle emission requirements of the Clean Air Act to the Northern Mariana Islands in the Commission's January 1982 interim report to Congress, at 54-61.

**See, for example, U.S. Moves to Bar Issuance by Territories of Billions of Dollars in Arbitrage Bonds, Wall Street Journal, December 21, 1983, at 34.

***Ideally, the views of the Representative to the United States for the Commonwealth of the Northern Mariana Islands (as well as of the delegates to Congress from other territories) could be sought at that time.

The geographic reach of a statute may be clearly and specifically defined by the phrase "This Act is applicable to" followed by an enumeration of the jurisdictions to which the statute is to apply. For example:

> This Act is applicable to the States of the United States and the District of Columbia.

or

> This Act is applicable to the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands.*

If the intent is to include all areas under the jurisdiction of the United States, the Commission recommends the following language:

> This Act is applicable to all areas under the jurisdiction of the United States.

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*Statutes enacted after termination of the trusteeship may use "the Commonwealth of the Northern Mariana Islands" instead of "the Northern Mariana Islands." Some statutes already applicable to the Northern Mariana Islands do refer to "the Commonwealth of the Northern Mariana Islands." See, for example, 33 U.S.C. § 151(c). Technically, however, the Northern Mariana Islands will not become a commonwealth of the United States until termination of the trusteeship. Covenant §§ 101, 1003(c). To avoid any suggestion that a statute is not to become effective in the Northern Mariana Islands until termination of the Trusteeship Agreement, statutes enacted before termination and intended to apply in the Northern Mariana Islands immediately should use "the Northern Mariana Islands" rather than "the Commonwealth of the Northern Mariana Islands." If the statute is not to become effective in the Northern Mariana Islands until after termination, however, that intent should be specified more clearly than merely by use of the phrase "Commonwealth of the Northern Mariana Islands." See, for example, 16 U.S.C. § 4601-8(b)(5): "the Commonwealth of the Northern Mariana Islands (when such islands achieve Commonwealth status)."

(The Northern Mariana Islands is under the jurisdiction of the United States. Trusteeship Agreement, Art. 3; Covenant §§ 101, 1003(c).)

If the intent is to apply a statute not to all areas under the jurisdiction of the United States but to only some of those areas, the Commission recommends enumeration of the areas to which it is to apply. By naming each such jurisdiction, confusion is avoided over such questions as whether "Territories" includes unincorporated territories* or whether the phrase, "territories and possessions," includes "commonwealths" such as Puerto Rico and, after termination of the trusteeship, the Northern Mariana Islands.** The courts have held that the meanings of these phrases may vary according to the "character and aim" of a particular statute. Garcia v. Friesecke, 597 F.2d 284, 293 (1st Cir. 1979), certiorari denied, 444 U.S. 940 (1979), quoting Puerto Rico v. Shell Co., 302 U.S. 253, 258 (1937). Enumerating the jurisdictions to which a statute is to apply ensures that a future court will not misread the "character and aim" of the statute to apply it in a jurisdiction not intended by Congress (or to not apply it in a jurisdiction in which Congress intended it to apply).

Many existing federal statutes define their geographic applicability by defining "State" or "United States" to include particular jurisdictions. In some cases, however, the operative terms of the statute refer to neither the United States nor the States. Despite that lapse, the Commission has concluded that inclusion of a particular jurisdiction in the definition of "United States" or of "State" for purposes of such a statute generally indicates congressional intent that the statute apply in that jurisdiction. See Rubenstein v. United States, 153 F.2d 127, 129 (D.C. Cir. 1946). Nonetheless, the Commission believes clarity is favored by using the specific formulation "This Act is applicable to . . ." rather than relying upon definitions of "United States" or "State" to indicate the jurisdictions in which the statute is to apply.

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*Compare U.S. Department of State, Bureau of Intelligence & Research, United States and Outlying Areas 9 (Geographic Bulletin No. 5, April 1965) with United States v. Villarin Gerena, 558 F.2d 723, 724-26 (1st Cir. 1977).

**See, for example, Americana of Puerto Rico, Inc. v. Kaplus, 368 F.2d 431, 433-36 (3d Cir. 1966), certiorari denied, 386 U.S. 943 (1967).

RECOMMENDED CHANGES IN FEDERAL LAW

A nonvoting delegate to the United States Congress.

Recommendation.

Legislation should be enacted to provide the Northern Mariana Islands representation in the United States Congress by conferring the status of nonvoting Delegate to the United States House of Representatives on the Resident Representative to the United States for the Northern Mariana Islands.

The statutes.

All legislative powers granted the Federal Government by the United States Constitution are vested in the Congress of the United States, which consists of the Senate and the House of Representatives. U.S. Const., Art. I, § 1. The members of the Senate and of the House of Representatives are elected by the citizens of the States of the United States. Id. § 2, cl. 1; Amend. XVII, amending Art. I, § 3, cl.1.

Present applicability.

The United States Constitution contains no provision for representation in Congress of citizens residing in areas within the jurisdiction of the United States but not part of any State. Even prior to adoption of the Constitution, however, section 12 of the Ordinance of 1787--which established the pattern for subsequent congressional legislation on territorial government--authorized a delegate to Congress from the Northwest Territories. 1 Stat. 52. The delegate selected was afforded "a seat in Congress with a right of debating, but not of voting." Id. Provision for a nonvoting delegate to Congress to represent areas within the United States that are not part of the United States has been common practice since that time. See generally E. Brown, The Territorial Delegate to Congress and Other Essays 3-38 (1950); chapter 7, "The Delegate in Territorial Relations," in E. Pomeroy, The Territories and the United States, 1861-1890 (rev. ed. 1969); and chapter 7, section 3, "Status of Delegates and Resident Commissioner," in 2 L. Deschler, Deschler's Precedents of the United States House of Representatives (1977) (House Document 94-661).

At the present time, the District of Columbia, Guam, the Virgin Islands, and American Samoa are represented by nonvoting "Delegates"

to the United States House of Representatives while Puerto Rico is represented by a nonvoting "Resident Commissioner."*

Delegates to the House of Representatives (including the Resident Commissioner from Puerto Rico) provide their constituencies with a voice in the legislative process. Although they cannot vote on the floor of the House, they serve on committees and, unless the Rules of the House of Representatives provide otherwise, are permitted to vote in committee. They receive the same compensation, allowances, and benefits as do Members of the House of Representatives.

The Northern Mariana Islands is not represented in the Congress of the United States.

Section 901 of the Covenant authorizes, and Article V of the Constitution of the Northern Mariana Islands provides for, election by the people of the Northern Mariana Islands of a Resident Representative to the United States. See also 1 Code of the Northern Mariana Islands §§ 4101 et seq. (1984), as amended by Northern Mariana Islands Public Law 3-92 (1984). This representative, however, does not have the status of a nonvoting delegate to the United States Congress.

Discussion.

"No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live." Wesberry v. Sanders, 376 U.S. 1, 17 (1964). See also Reynolds v. Sims, 377 U.S. 533, 555, 564-65 (1964); Gray v. Sanders, 372 U.S. 368, 381 (1963). The Congress of the United States has plenary power to make the laws under which the people of the Northern Mariana Islands, as good citizens, must live. U.S. Const., Art. IV, § 3, cl. 2; Trusteeship Agreement, Art. 3. Nothing in the United States Constitution or in the Covenant, however, requires that the people of the Northern Mariana Islands be granted a voice in the United States Congress, to speak on the laws under which the people of the Northern Mariana Islands must live. Indeed, the population of the Northern Mariana Islands is such that were it able to elect a full-fledged Member in the House of Representatives, the Northern Mariana Islands would be disproportionately over-represented in the House.

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*Public Law 91-405, § 201, 84 Stat. 845 (1970), D.C. Code § 1-401 (1981) (District of Columbia); 48 U.S.C. §§ 1711-1715 (Guam and the Virgin Islands); id. §§ 1731-1735 (American Samoa); id. §§ 891-894 (Puerto Rico).

Provision of a delegate to the House of Representatives, coupled with the large measure of local self-government granted by Article I of the Covenant, constitutes a reasonable compromise between the requirements of representative democracy and the realities of small population and distant location.

Much that was said in support of creation of the office of Delegate to the United States House of Representatives from American Samoa applies with equal strength in favor of establishing an office of nonvoting delegate from the Northern Mariana Islands:

> The justification for direct territorial representation for American Samoa in Congress goes back to 1790, wherein the Congress provided for a nonvoting delegate from "the territory south of the River Ohio," which later became the State of Tennessee. Since that time, some 30 other U.S. territories have been represented by nonvoting delegates to the Congress before they became States of the Union. Populations of the different territories have varied from as many as 5,000 to 259,000 when they were represented by nonvoting delegates.
>
> The rapidly changing economic and social conditions in both the continental United States and throughout the Pacific area provide a compelling reason for direct representation of the Territory of American Samoa in the House of Representatives. Presently, the offshore areas are not affected by general legislation unless they are specifically mentioned in the legislation or the legislation is made applicable to the territories and possessions of the United States. In many instances, the legislative objectives of the offshore areas range, inter alia, from education and welfare assistance to medical and health insurance, housing, agricultural assistance, unemployment compensation, prevailing wage rates, small businesses, labor unions and management, immigration, airport construction assistance, foreign trade, commercial fishing, highway and harbor construction assistance, air routes, water and electricity, oil and watch quotas, veterans benefits, and many others.
>
> Under provisions of [this legislation], a nonvoting delegate from American Samoa can more effectively represent and interpret the needs, welfare and interests of the territory. Furthermore, the nonvoting delegate will carry the responsibility of maintaining the contacts and liaison with the various committees of the Congress and the officials of the executive branch of the Federal Government. Additionally, the nonvoting delegate will relieve other Members of Congress of the necessity of

> dealing with individual problems and related subject areas that directly affect the interests of the Territory of American Samoa.
>
> [This legislation] is in keeping with the best of American traditions to encourage greater participation by the local residents in the affairs of their government. Over the years, Congress has continually provided greater self-government and responsibility for its territories. The enactment of [this legislation] would especially lessen any lingering impressions of American colonialism, as it is thought of in some quarters of the world.

House Report 95-1458, at 3-4 (1978).

Congress should now enact legislation to provide for nonvoting representation of the Northern Mariana Islands in the United States House of Representatives. Every area within the American political system that has a permanent population is represented in the Congress of the United States. The people of the Northern Mariana Islands have now done all that is required of them to become part of that political system and Congress, in approving the Covenant, has given its assent.

To be sure, the Northern Mariana Islands has a smaller population than any of the jurisdictions now represented in Congress. Its population of 17,000 persons, however, is not of an order of magnitude different from American Samoa's population of approximately 31,000. As noted in the excerpt quoted from the House Report, above, nonvoting delegates have represented as few as 5,000 persons.

The proposed legislation would confer the status of nonvoting delegate on the Resident Representative to the United States for the Northern Mariana Islands. This position was authorized by section 901 of the Covenant and has been established by Article V of the Constitution of the Northern Mariana Islands.* See also 1 Code of the Northern Mariana Islands §§ 4101 et seq. (1984), as amended by Northern Mariana Islands Public Law 3-92 (1984). The negotiators of the Covenant drafted section 901 with a view toward the possibility that Congress might confer nonvoting delegate status on the Resident Representative. Report of the Joint Drafting Committee on the Negotiating History of the Covenant, at C-4 (1975), reprinted in Hearings before the Subcommittee on Territorial and Insular Affairs of the House Committee on Interior and Insular Affairs on H.J. Res. 549 et al. to Approve the "Covenant to Establish a Commonwealth of

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*The Constitution of the Northern Mariana Islands was deemed approved by Presidential Proclamation 4534 in 1977. 42 Fed. Reg. 56593.

the Northern Mariana Islands," 94th Cong., 1st Sess. 374, 406 (1975). See also Senate Report 94-433, The Covenant to Establish a Commonwealth of the Northern Mariana Islands 65, 90 (1975). Section 901 provides that the Resident Representative "must be a citizen and resident of the Northern Mariana Islands, at least twenty-five years of age, and, after termination of the Trusteeship Agreement, a citizen of the United States." Article V of the Constitution of the Northern Mariana Islands adds that the Resident Representative shall have been a resident and domiciliary of the Northern Mariana Islands for at least seven years immediately preceding the date of taking office and provides for popular election of the Resident Representative to a two-year term.

The Delegates from Guam, the Virgin Islands, and American Samoa likewise must be at least twenty-five years of age on the date of their election and must be inhabitants of the territories from which they are elected. 48 U.S.C. §§ 1713, 1733. The Delegates from Guam and the Virgin Islands at election must have been citizens of the United States for at least seven years. Id. § 1713(b). The Delegate from American Samoa, where most residents are nationals rather than citizens of the United States, is required to owe allegiance to the United States.* Id. § 1733(b). The Delegates from Guam, the Virgin Islands, and American Samoa are popularly elected and, at the time of election, may not be a candidate for any other office. Id. §§ 1711, 1713(d), 1732(a), 1733(d).

The qualifications and election procedures for the office of Resident Representative to the United States for the Northern Mariana Islands are thus basically consistent with the qualifications and election procedures for the territorial Delegate offices. The legislation here proposed, which confers delegate status on the Resident Representative, establishes qualifications and election procedures for that office similar to those for the office of territorial Delegate. Because there is no inconsistency between the requirements in the proposed legislation and those in the Covenant, there is no need to amend either the Covenant or the Constitution of the Northern Mariana Islands.** The proposed legislation does,

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*The distinction between "citizens" and "nationals" of the United States is not well-defined. Nationals--like citizens--owe allegiance to the United States and are entitled to its protection, but do not qualify for some rights and privileges granted by statute only to citizens.

**To avoid the necessity of amendment of either of these fundamental documents, the proposed legislation also retains the title, "Resident Representative," rather than substituting the more common title, "Delegate." Puerto Rico's "Resident Commissioner" is a precedent for this variation in nomenclature.

however, impose the additional requirement that the Resident Representative, on the date of election, be a candidate for no other office.

Regular general elections in the Northern Mariana Islands are held on the first Sunday in November in odd-numbered years. Constitution of the Northern Mariana Islands, Art. VIII, § 1 and Schedule on Transitional Matters § 10; Presidential Proclamation 4534, 42 Fed. Reg. 56593 (1977). The Resident Representative, under Northern Mariana Islands law, is elected at that time to a two-year term. Constitution of the Northern Mariana Islands, Art. V, §§ 1, 2; Northern Mariana Islands Constitutional Convention, Analysis of the Constitution of the Commonwealth of the Northern Mariana Islands 124-25 (1976).* The Resident Representative takes office on the second Monday in January of the following year. Constitution of the Northern Mariana Islands, Art. VIII, § 4.

By contrast, Representatives and Delegates to the Congress are elected on the first Tuesday after the first Monday in November in even-numbered years and take office on the third day in January of the following year. 2 U.S.C. § 7. Representatives and the Delegates from the District of Columbia, Guam, the Virgin Islands, and American Samoa serve two-year terms. D.C. Code § 1-401(a) (1981) (District of Coluumbia); 48 U.S.C. § 1712(a) (Guam and the Virgin Islands); id. § 1732(a) (American Samoa). The Resident Commissioner from Puerto Rico, however, serves a four-year term. Id. § 891.

The legislation here proposed allows the people of the Northern Mariana Islands to elect the Resident Representative as provided in their Constitution, even though the Resident Representative will be elected and take office in different years (and on different days) than the Representatives and other Delegates. The uniform federal election date was established in 1871 to make voting in more than one jurisdiction difficult and to prevent news of results in earlier elections from influencing the outcome in later elections. 45 Cong. Globe 112, 141 (1871).** These concerns are of little moment in the case of the Northern Mariana Islands at the present time. A few persons may in fact be able to vote for both the Resident Representative for the Northern Mariana Islands and a Representative

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*The Resident Representative's term may be increased to no more than four years by popular initiative. Constitution of the Northern Mariana Islands, Art. V, § 2.

**Prior to 1871, each State set its own election date. Id. See U.S. Const., Art. 1, § 4, cl.1.

or Delegate from another jurisdiction. But voter registration requirements, the Resident Representative's limited powers in Congress, and the time and money required to travel between the Northern Mariana Islands and other jurisdictions make unlikely intentional efforts to subvert the electoral process by taking advantage of the discrepancy in election dates. As for preventing earlier election results from influencing the outcome in later elections, modern communications have made that goal elusive even when elections are held on the same day but in different time zones.

Requiring election of the Resident Representative on the same day as the election of Representatives and other Delegates to the House of Representatives is a reasonable alternative to the proposal here made. But to achieve this uniformity the Northern Mariana Islands would either have to amend its constitution to change its regular general election from the first Sunday in November in odd-numbered years to the first Tuesday after the first Monday in November in even-numbered years or suffer the costs of holding an extra election every other year. (While a federal statute would supercede the provisions of the Constitution of the Northern Mariana Islands regarding election of the Resident Representative, it would not affect the provisions as they relate to election of other public officials in the Northern Mariana Islands. The extra election would still be required unless the people of the Northern Mariana Islands amended their constitution.)

Under the proposed legislation, the first Resident Representative with the status of nonvoting Delegate to the House of Representatives would be elected at the regular general election in the first odd-numbered year subsequent to enactment of the legislation. The effective date of the proposed legislation is not postponed until after termination of the trusteeship, even though the Covenant will not be fully implemented until that time. The date for termination of the trusteeship is not yet known, and may not arrive for several years. In the meantime, Congress will make many legislative decisions affecting the Northern Mariana Islands, decisions in which the Northern Mariana Islands should have a voice. Indeed it is in this period, when many members of Congress are little acquainted with the particular needs of the Northern Mariana Islands, that participation by the nonvoting Resident Representative may be most important. In embracing the Covenant, the people of the Northern Mariana Islands have already made their decision to be part of the United States. No purpose is served by delaying their election of a nonvoting Resident Representative to the United States House of Representatives until some uncertain date in the future when the trusteeship is finally terminated.

Proposed legislative language.

The following language, if enacted by the United States Congress, would implement the Commission's recommendation:

An Act to confer the status of nonvoting Delegate to the United States House of Representatives on the Resident Representative to the United States for the Northern Mariana Islands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the Northern Mariana Islands shall be represented in the United States Congress by the Resident Representative to the United States authorized by section 901 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (approved by Public Law 94-241, 90 Stat. 263). The Resident Representative shall be a nonvoting Delegate to the House of Representatives, elected as hereinafter provided.

Sec. 2. (a) The Resident Representative shall be elected by the people qualified to vote for the popularly elected officials of the Northern Mariana Islands at the regular general election, on the day and month set by section 1 of Article VIII of the Constitution of the Northern Mariana Islands, in the first odd-numbered year subsequent to enactment of this Act and thereafter as provided in the Constitution of the Northern Mariana Islands. The Resident Representative shall be elected at large, by separate ballot, and by a majority of the votes cast for the office of Resident Representative. If no candidate receives such majority, on the fourteenth day following such election a runoff election shall be held between the candidates receiving the highest and the second highest number of votes cast for the office of Resident Representative. In case of a permanent vacancy in the office of Resident Representative by reason of death, resignation, or permanent disability, the office of Resident Representative shall remain vacant until a successor shall have been elected and qualified.

(b) The term of the Resident Representative shall commence on the second Monday of January following the date of the election.

Sec. 3. To be eligible for the office of Resident Representative, a candidate shall:

(a) be at least twenty-five years of age on the date of the election;

(b) be a citizen of the United States, provided, however, that prior to termination of the Trusteeship Agreement for the former Japanese Mandated Islands, 61 Stat. 3301, the candidate may be a person defined as a United States citizen or United States national in section 8 of the Schedule on Transitional Matters of the Constitution of the Northern Mariana Islands, as approved by Presidential Proclamation 4534 of October 24, 1977;

(c) have been a resident and domiciliary of the Northern Mariana Islands for at least seven years prior to the date of taking office;

(d) not be, on the date of the election, a candidate for any other office.

Sec. 4. Acting pursuant to legislation enacted in accordance with the Constitution of the Northern Mariana Islands, the Government of the Northern Mariana Islands will determine the order of names on the ballot for election of Resident Representative, the method by which a special election to fill a vacancy in the office of Resident Representative shall be conducted, the method by which ties between candidates for the office of Resident Representative shall be resolved, and all other matters of local application pertaining to the election and the office of Resident Representative not otherwise expressly provided for herein.

Sec. 5. Until the Rules of the House of Representatives are amended to provide otherwise, the Resident Representative for the Northern Mariana Islands shall receive the same compensation, allowance, and benefits as a Member of the House of Representatives, and shall be entitled to whatever privileges and immunities that are, or hereinafter may be, granted to the nonvoting Delegate from the Territory of Guam.

* * *

Land grant colleges.

Recommendation.

Legislation should be enacted to permit land-grant funding of a post-secondary educational institution in the Northern Mariana Islands.

The statutes.

The Morrill Act. The Morrill Act of 1862, now codified as sections 301 to 308 of title 7 of the United States Code, established the system of federal land-grant aid to State-supported colleges and universities. Each State was granted 30,000 acres of federal public land (or its equivalent in land scrip) for each Senator and Representative to which the State was entitled under the 1860 census. Revenue from the sale of these lands was to be invested in a perpetual fund, with only interest from the fund used to support qualified colleges and universities.

A college or university, to qualify for land-grant support under the Morrill Act, must, first, have been established by the State; second, have as its principal object the teaching of agriculture and "the mechanic arts;" and, third, include military tactics as part of its curriculum. 7 U.S.C. § 304. Land-grant funds may not be used for the purchase, erection, or repair of buildings. Id. § 305.

The Second Morrill Act. The Second Morrill Act, enacted in 1890 and now codified at sections 321 to 329 of title 7 of the United States Code, provides a flat annual grant of $50,000 to each State or Territory with a college or university established under the earlier Morrill Act. This grant is for use only in support of instruction in food and agricultural sciences. 7 U.S.C. § 322. Additional funds are authorized to be appropriated to States and designated territories and possessions for support of land-grant colleges and universities by a later amendment of the Second Morrill Act, the Bankhead-Jones Act of 1935, 7 U.S.C. § 329. These funds may be used in support of any of the permissible purposes of land-grant colleges and universities.

Retirement programs. The authorized uses of federal land-grant funds have been expanded to include employer contributions to qualified pension and retirement plans on behalf of land-grant college employees. 7 U.S.C. § 331.

The Smith-Lever Act. The Smith-Lever Act, now codified at sections 341 to 349 of title 7 of the United States Code, authorizes annual appropriations to States, Territories, and possessions for agricultural extension work. Dissemination of information on agriculture and home economics under this program is carried out by land-grant colleges in cooperation with the United States Department of Agriculture.

The Agricultural Research, Extension, and Teaching Policy Act. The Agricultural, Research, Extension, and Teaching Policy Act of 1977, as amended and now codified at sections 3101 to 3336 of title 7 of the United States Code, provides authorization for funding of a wide variety of agricultural research and extension programs. One of these programs contemplates a central role for land-grant colleges

and universities or the agricultural extension services established at land-grant institutions. That program is the biomass energy education and technical assistance program. See 7 U.S.C. § 3129. In addition, the Act authorizes appropriations to land-grant institutions for agricultural and forestry extension, id. § 3221; for agricultural research, id. § 3222; and for acquisition and improvement of research facilities and equipment, id. § 3223.

Other programs authorized by the Act do not require the existence of a land-grant institution, although such institutions are usually eligible to receive funding under the programs. These programs include matching grants to States for support of schools of veterinary medicine, 7 U.S.C. § 3151; grants to States and individual fellowships for higher education in food and agricultural sciences, id. § 3152; awards to individuals for research or advanced studies in food and agricultural sciences, id. § 3153; grants to institutions for research in agricultural chemicals, biomass energy, and industrial hydrocarbons, id. § 3154; support of nutrition education, id. § 3175; matching grants to States and institutions for animal health and disease research, id. §§ 3195-3196; grants to institutions for solar energy research and development, id. §§ 3261-3262; grants to States for aquaculture development, id. § 3322; and grants to institutions for rangeland research, id. § 3333.

Other statutes. An institution designated as a land-grant college or university is eligible to receive support under various other federal programs. Among the activities so supported are agricultural experiment stations, under the Hatch Act of 1887, 7 U.S.C. §§ 361a et seq. (chapter 14). Each State is entitled to receive support for experiment stations carrying on research in agricultural and rural development. Land-grant colleges and universities also may receive support for research in rural development, id. §§ 2661 et seq., and forestry research, 16 U.S.C. §§ 582a et seq. Land-grant institutions are entitled to receive standard sets of weights and measures from the Secretary of Commerce. 15 U.S.C. §§ 201-203. Faculty and students at a land-grant institution are permitted to use a federal marine biological station in Florida. 20 U.S.C. § 92.

Present applicability.

The Morrill Act. The original Morrill Act of 1862 is by its own terms applicable only to the States of the United States. See 7 U.S.C. §§ 301-305. Section 506 of Public Law 92-318, 86 Stat. 235 (1972), as amended by section 1361(a) of Public Law 96-374, 94 Stat. 1367 (1980), however, confers land-grant status on the College of the Virgin Islands, the Community College of American Samoa, the College of Micronesia, and the University of Guam. In lieu of land or land scrip, appropriations of $3,000,000 each to the Virgin Islands, Guam, American Samoa, and "Micronesia" are authorized for establishment of

perpetual funds, the interest from which is available for support of the designated institutions.

In conferring land-grant status on the College of Micronesia, Congress apparently thought it was making land-grant programs available in the Northern Mariana Islands. See 126 Cong. Rec. S12038-39 (daily ed., September 4, 1980). The College of Micronesia, however, was established by Trust Territory Public Law 7-62, a law not applicable to the Northern Mariana Islands because the Northern Mariana Islands had already been administratively separated from the rest of the Trust Territory when that law was enacted. Accordingly, while Public Law 7-62 provided representation to other Trust Territory jurisdictions on the College's board of regents, no provision was made for appointment of a member to represent the Northern Mariana Islands. And, while students from the Northern Mariana Islands may attend the College of Micronesia (just as they may attend the University of Guam or Michigan State University), few in fact do enroll there.

The Second Morrill Act. The Virgin Islands, American Samoa, "Micronesia," and Guam are each entitled to receive under the Second Morrill Act the same amounts as if they were States. 7 U.S.C. § 326a.* This entitlement, however, only extends to federal support of instruction in food and agricultural sciences. Id. Less restricted additional funding under the Second Morrill Act is also available to the several States, Puerto Rico, the Virgin Islands, and Guam. Id. § 329. Under section 502(a)(1) of the Covenant, aid under the Second Morrill Act would be available on equivalent terms to the Northern Mariana Islands, were there a qualified institution in the Northern Mariana Islands.

Retirement programs. The statutory permission to use land-grant funds for employer contributions to qualified pension and retirement plans on behalf of employees of land-grant institutions is given to the several States and to Guam. Accordingly, under section 502(a) of the Covenant, the Northern Mariana Islands would be able to use land-grant funds for retirement programs.

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*Entitlements for "Micronesia" and American Samoa were added in 1980. Public Law 96-374, § 1393(a), 94 Stat. 1367. On January 9, 1978, the effective date of the Covenant, however, aid under the Second Morrill Act was available to Guam. Accordingly, under section 502(a)(1) of the Covenant, the Northern Mariana Islands is entitled to treatment equivalent to that given Guam, that is, as a State. Whether the 1980 amendment, adding "Micronesia," was intended to modify that treatment is uncertain. The question is academic because no institution in the Northern Mariana Islands is eligible for land-grant designation at this time.

The Smith-Lever Act. One hundred thousand dollars is specifically authorized for payment to Guam under the Smith-Lever Act. 7 U.S.C. § 343. See also id. § 349. Under section 502(a)(1) of the Covenant, the Northern Mariana Islands would be entitled to an equivalent amount for agricultural extension work, were there a qualified institution in the Northern Mariana Islands.

The Agricultural Research, Extension, and Teaching Policy Act. "State" is defined, for purposes of the Agricultural Research, Extension, and Teaching Act, to include the Northern Mariana Islands. 7 U.S.C. § 3103(12). Accordingly, the Act is applicable to the Northern Mariana Islands just as it is to the several States.

Other statutes. The Hatch Act of 1887, 7 U.S.C. §§ 361a et seq., authorizing, among other things, support of research at agricultural experiment stations run by land-grant institutions, is applicable to Guam. Id. §§ 361a, 361c(b)(2). It is thus applicable to the Northern Mariana Islands by operation of section 502(a)(1) of the Covenant, but obviously cannot provide support for a nonexistent institution.

Research in rural development at land-grant institutions is supported by federal funds under sections 501 et seq. of Public Law 92-419 (as added by section 1444(a) of Public Law 97-98 (1981)), 7 U.S.C. §§ 2661 et seq. This law is specifically applicable to the Northern Mariana Islands. 7 U.S.C. § 2666(b). Again, a land-grant institution is necessary for full implementation of the law in the Northern Mariana Islands.

Federal support for forestry research at land-grant institutions is authorized by section 2 of Public Law 87-788 (1962), 16 U.S.C. §§ 582a et seq. This law is also applicable to Guam, 16 U.S.C. § 582a-7, and is thus applicable to the Northern Mariana Islands by operation of section 502(a)(1) of the Covenant. Forestry research in the Northern Mariana Islands cannot be supported, however, in the absence of a land-grant institution.

Discussion.

At present most foods consumed in the Northern Mariana Islands are imported. Current agricultural production is a fraction of that in the 1930s. Increased agricultural production would permit satisfaction of local market demand and development of an export trade. The Northern Mariana Islands is particularly well-situated to provide tropical produce to Japan and other non-tropical industrial nations in the Western Pacific area. Research, education, and extension work in the food and agricultural sciences would be of obvious benefit to the Northern Mariana Islands in increasing agricultural production.

The population of the Northern Mariana Islands in 1980 was about 17,000. The small population limits the capability of the Northern Mariana Islands to support institutions of higher learning. The only postsecondary educational institution in the Northern Mariana Islands serving the local populace is the Northern Marianas College. This public community college is unaccredited but, by contract with accredited institutions, offers accredited courses to students in the Northern Mariana Islands.

Many federal laws authorizing funding of land-grant institutions are only technically applicable to the Northern Mariana Islands. No funds actually reach the Northern Mariana Islands because no institution there has been designated as a land-grant college or university. Until that designation is specifically permitted under federal law, the Northern Mariana Islands is effectively prevented from participating in land-grant programs. All other jurisdictions under the American flag participate in these programs and so, too, do the other jurisdictions within the Trust Territory of the Pacific Islands. To allow the Northern Mariana Islands to participate in these programs, provision must be made for designation of a land-grant institution in the Northern Mariana Islands. The legislation recommended in this report makes such provision.

The legislation proposed in this report does not condition land-grant assistance to the Northern Mariana Islands on the continued existence of the Northern Marianas College. The early history of the college is promising, but it is too soon to tell if the college will establish itself as a reasonably permanent institution. Accordingly, the proposed legislation allows the legislature of the Northern Mariana Islands to designate the institution to administer land-grant programs in the Northern Mariana Islands. While the legislature may designate the Northern Marianas College as that institution, the procedure permits another institution to be chosen without the necessity of involving Congress, should the legislature believe the college for any reason is unable to administer the land-grant programs.

The proposed legislation extends to the Northern Mariana Islands treatment under the Morrill Act equivalent to that afforded Guam, and makes clear that the Northern Mariana Islands is not to be treated as part of Micronesia for purposes of that Act. That extension is consistent with the obligation of the United States under section 502(a)(1) of the Covenant to make applicable to the Northern Mariana Islands those federal laws providing financial assistance on the same terms as they apply to Guam. See also Covenant § 703(a). The Northern Mariana Islands would thus be authorized to receive a single appropriation of three million dollars as an endowment in lieu of public land, to be used for the maintenance of a land-grant institution in accordance with the Morrill Act. The proposed legislation also allows the Northern Mariana Islands to receive (like

all other States and territories of the United States) a $50,000 annual grant for instruction in food and agricultural sciences under the Second Morrill Act (7 U.S.C. § 322). The Northern Mariana Islands, in the recommended legislation, also becomes eligible to receive an equal share of the annual national grant of $8,250,000, or $150,000, and an additional $20,000, or a total of $170,000, for support of its land-grant institution under the later amendment to the Second Morrill Act in the Bankhead-Jones Act, 7 U.S.C. § 329.

Although the Smith-Lever Act now applies to the Northern Mariana Islands by operation of section 502(a)(1) of the Covenant, the proposed legislation again makes clear that the Northern Mariana Islands is entitled to treatment equivalent to that afforded Guam and is not to be considered as part of Micronesia. The authorization of appropriations under the Smith-Lever Act does not specifically mention the Northern Mariana Islands. See 7 U.S.C. § 343(b)(2). But section 502(a)(1) of the Covenant is itself an authorization of appropriations to the Northern Mariana Islands. The proposed legislation also eliminates for the Northern Mariana Islands the requirement that the Northern Mariana Islands match federal funds with its own very limited funds. Because the economy of the Northern Mariana Islands is less developed than that of most areas in the United States, fewer resources are available to the local government. Matching requirements can prevent implementation in the Northern Mariana Islands of beneficial programs, such as the Smith-Lever extension program.

No legislative changes are recommended with respect to the present law allowing use of land-grant funds for employer contributions to qualified pension and retirement plans on behalf of land-grant college employees.

The only change recommended with regard to the Agricultural Research, Extension, and Teaching Policy Act removes the requirements that a college or university in the Northern Mariana Islands, in order to receive assistance, award a bachelor's degree or a higher degree and be accredited by a nationally recognized accrediting agency or association. Given the small population of the Northern Mariana Islands, it may not be feasible or desirable to require an eligible institution to offer a bachelor's degree or a higher degree. Agricultural research and extension in the Northern Mariana Islands might well be conducted under the auspices of a community college offering only an associate degree. The community college might, for example, contract with the University of Guam for assistance in administering such programs. The application of national accreditation standards, which may be inappropriate to the Northern Mariana Islands in the first place, could operate to foreclose the very assistance needed by the Northern Mariana Islands to conform a fledgling postsecondary educational institution to those standards.

The proposed legislation applies to a land-grant institution in the Northern Mariana Islands all federal laws relating to the operation of or provision of assistance to a land-grant college in the Virgin Islands or Guam. The institution thus becomes eligible for support of research at an institution-run agricultural experiment station under the Hatch Act of 1887, 7 U.S.C. §§ 361a et seq.;* for support of research in rural development, 7 U.S.C. §§ 2661 et seq.; and for forestry research grants, 16 U.S.C. §§ 582a et seq. Its faculty and students are also permitted use of a federal marine biological station in Florida. 20 U.S.C. § 92.

The Northern Mariana Islands is the only area under the permanent jurisdiction of the United States that does not have a land-grant institution. The proposed legislation, if enacted, would remedy that situation, would increase the availability of post-secondary education for residents of the Northern Mariana Islands, and should make a major contribution toward agricultural development in the Northern Mariana Islands.

The United States has agreed to assist the Northern Mariana Islands "to achieve a progressively higher standard of living for its people as part of the American economic community and to develop the economic resources needed to meet the financial responsibilities of local self-government." Covenant § 701. The United States has also agreed to "make available to the Northern Mariana Islands the full range of federal programs and services available to the territories of the United States." Id. § 703(a). Enactment of the proposed legislation would further each of those objectives and is thus in partial fulfillment of the obligations of the United States under the Covenant.

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*The Hatch Act, which provides financial assistance to Guam as well as the fifty States, is already applicable to the Northern Mariana Islands by operation of section 502(a)(1) of the Covenant. See 7 U.S.C. § 361a. The authorization of appropriations does not specifically mention the Northern Mariana Islands. Id. § 361c. But section 502(a)(1) of the Covenant is itself an authorization of appropriations under the Act to the Northern Mariana Islands.

The legislation proposed in this report makes explicit the authorization of appropriations to the Northern Mariana Islands. It also eliminates for the Northern Mariana Islands the requirement that the Northern Mariana Islands provide matching funds, on the same rationale as that supporting elimination of the similar requirement under the Smith-Lever Act, above.

Proposed legislative language.

The following language, if adopted by the United States Congress, would implement the Commission's recommendation:

An Act to authorize establishment of a land-grant institution in the Northern Mariana Islands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that section 506 of Public Law 92-318, 86 Stat. 235, as amended, is further amended to read as follows:

(a) The College of the Virgin Islands, the Community College of American Samoa, the College of Micronesia, the University of Guam, and an institution in the Northern Mariana Islands designated by the legislature of the Northern Mariana Islands shall be considered land-grant colleges established for the benefit of agriculture and mechanic arts in accordance with the provisions of the Act of July 2, 1862, as amended (7 U.S.C. §§ 301-305, 307-308).

(b) In lieu of extending to the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands (other than the Northern Mariana Islands) those provisions of the Act of July 2, 1862, as amended, relating to donations of public land or land scrip for the endowment and maintenance of colleges for the benefit of agriculture and the mechanic arts, there is authorized to be appropriated $3,000,000 to the Virgin Islands, $3,000,000 to Guam, and $3,000,000 to the Northern Mariana Islands and an equal amount to American Samoa and to the Trust Territory of the Pacific Islands (other than the Northern Mariana Islands). Amounts appropriated pursuant to this section shall be held and considered to have been granted to the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands (other than the Northern Mariana Islands) subject to the provisions of that Act applicable to the proceeds from the sale of land or land scrip.

Sec. 2. Subsection (c) of section 1361 of Public Law 96-374, 94 Stat. 1367, is amended to read as follows:

> Any provision of any Act of Congress relating to the operation of or provision of assistance to a land-grant college in the Virgin Islands or Guam shall apply to land grant colleges in American Samoa, the Northern Mariana Islands and the Trust Territory of the Pacific Islands (other than the Northern Mariana Islands) in the same manner and to the same extent.

Sec. 3. Section 5 of the Act of August 30, 1890, c.841, 26 Stat. 417 (the Second Morrill Act), as added by section 506(c) of Public Law 92-318, 86 Stat. 235, and as amended (7 U.S.C. § 326a), is further amended to read as follows:

> There is authorized to be appropriated annually for payment to the Virgin Islands, American Samoa, Guam, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands (other than the Northern Mariana Islands) the amount they would receive under this Act if they were States. Sums appropriated under this section shall be treated in the same manner and be subject to the same provisions of law, as would be the case if they had been appropriated by the first sentence of this Act.

Sec. 4. Section 22 of the Act of June 29, 1935, c.338, 49 Stat. 439, as amended (7 U.S.C. § 329) is further amended--

> (a) by striking out "and Guam" wherever it appears and inserting in lieu thereof "Guam, and the Northern Mariana Islands";
>
> (b) by striking out "$8,100,000" and inserting in lieu thereof "$8,250,000"; and
>
> (c) by striking out "$4,360,000" and inserting in lieu thereof "$4,380,000".

Sec. 5. The first sentence of section 3(b)(2) of the Act of May 8, 1914, c.79, 38 Stat. 372, as amended (7 U.S.C. § 343), is further amended by striking out "and Guam" and inserting in lieu thereof "Guam, and the Northern Mariana Islands".

Sec. 6. Section 10 of the Act of May 8, 1914, c.79, 38 Stat. 372, as added by section 1(i) of Public Law

87-749, 76 Stat. 745, and as amended (7 U.S.C. § 349), is further amended to read as follows:

> The term "State" means the States of the Union, Puerto Rico, the Virgin Islands, Guam, and the Northern Mariana Islands.

Sec. 7. Notwithstanding subsection (4) of section 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. § 3103(4)), an institution in the Northern Mariana Islands designated by the legislature of the Northern Mariana Islands as a land-grant college, pursuant to section 506(a) of Public Law 92-318 (86 Stat. 235) as amended by section 1 of this Act, shall not be required, in order to qualify as a "college" or "university" for purposes of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended, to (1) provide an educational program for which a bachelor's degree or any other higher degree is awarded, or (2) be accredited by a nationally recognized accrediting agency or association.

Sec. 8. The first sentence of section 3(b)(2) of the Act of August 11, 1955, c.790, 69 Stat. 671, as amended (7 U.S.C. § 361c(b)(2)), is further amended by striking out "and Guam" and inserting in lieu thereof "Guam, and the Northern Mariana Islands".

* * *

Residency requirement for naturalization of citizens of the Northern Mariana Islands who become nationals of the United States on termination of the trusteeship.

Recommendation.

Citizens of the Northern Mariana Islands who elect to become nationals rather than citizens of the United States on termination of the trusteeship cannot subsequently be naturalized as citizens of the United States without establishing a residence in another part of the United States. Legislation should be enacted to allow residence in the Northern Mariana Islands to satisfy residency requirements for naturalization of these nationals.

The statutes.

The nationality laws of the United States set forth the procedure for naturalization of an alien as a citizen of the United States. Fundamental prerequisites to naturalization for most aliens are legal admission into the United States, residency of at least

five (or, in the case of the spouse of a United States citizen, three) years in the United States, and an understanding of the English language and of the history and government of the United States. 8 U.S.C. §§ 1423, 1427, 1430.

Discussion.

On termination of the trusteeship, citizens of the Northern Mariana Islands will become citizens of the United States. Covenant §§ 301, 1003 (c).

Section 302 of the Covenant, however, allows citizens of the Northern Mariana Islands to elect to become nationals rather than citizens of the United States within six months after termination of the trusteeship.* Some of those who decide then to become nationals may subsequently have second thoughts. A national may be naturalized as a citizen of the United States, but to do so the national must first become a resident of one of the fifty States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, or American Samoa. 8 U.S.C. §§ 1101(29), (38); 1436. The national may not remain a resident of the Northern Mariana Islands if he or she decides to seek naturalization. Legislation is here proposed to allow persons electing United States nationality rather than United States citizenship pursuant to section 302 of the Covenant subsequently to seek naturalization without the necessity of leaving the Northern Mariana Islands.

The proposed legislation also grants to the courts of record of the Northern Mariana Islands and the District Court for the Northern Mariana Islands jurisdiction to naturalize persons eligible for naturalization under the proposed legislation who reside within the Northern Mariana Islands.

Proposed legislative language.

The following language, if enacted by the United States Congress, would implement the Commission's recommendation that legislation be enacted to allow citizens of the Northern Mariana Islands who elect to become nationals rather than citizens of the United States on termination of the trusteeship subsequently to be naturalized as citizens of the United States without establishing a residence in another part of the United States.

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*The distinction between "citizens" and "nationals" of the United States is not well-defined. Nationals--like citizens--owe allegiance to the United States and are entitled to its protection, but do not qualify for some rights and privileges granted by statute only to citizens.

An Act modifying residency requirements for naturalization as United States citizens of certain nationals of the United States residing in the Northern Mariana Islands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that (a) a person who elects to become a national rather than a citizen of the United States pursuant to section 302 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union, with the United States of America (approved by Public Law 94-241, 90 Stat. 263) may be naturalized subsequently as a citizen of the United States upon compliance with applicable requirements of the Immigration and Nationality Act, except that in petitions for naturalization filed under the provisions of this section residence and physical presence within the United States within the meaning of the Immigration and Nationality Act shall include residence and physical presence within the Northern Mariana Islands.

(b) For purposes of the requirements of judicial naturalization of persons eligible for naturalization under this section, the Northern Mariana Islands will be deemed to constitute a State as defined in subsection 101(a), paragraph (36) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(36)).

(c) The courts of record of the Northern Mariana Islands and the District Court for the Northern Mariana Islands shall have jurisdiction to naturalize persons who become eligible under this section and who reside within their respective jurisdictions.

* * *

Nominations to the United States Military Academy, the United States Naval Academy, and the United States Air Force Academy.

Recommendation.

Legislation should be enacted to allow the Resident Representative to the United States for the Northern Mariana Islands to nominate one individual each from the Northern Mariana Islands to attend the United States Military Academy, the United States Naval Academy, and the United States Air Force Academy at any one time.

The statutes.

The academies. "The United States Military Academy is located at West Point, New York. The course is of 4 years' duration, during which the cadets receive, besides a general education, theoretical and practical training as junior officers. Cadets who complete the course satisfactorily receive the degree of Bachelor of Science and a commission as second lieutenant in the Army." U.S. Government Manual 194 (1982).

The United States Naval Academy in Annapolis, Maryland "offers a 4-year program of academic, military, and professional instruction for the training and education of young men and women for the naval services. Completion of the program normally leads to a commission in the United States Navy or the United States Marine Corps, and to one of seven designated Bachelor of Science degrees in engineering fields, plus an undesignated Bachelor of Science degree with major options in 11 fields." Id. at 210.

The United States Air Force Academy, in Colorado Springs, Colorado, "provides a 4-year educational curriculum for cadets that includes a baccalaureate level education in airmanship, related sciences, and the humanities." Id. at 178. Graduates receive the degree of Bachelor of Science and a commission as second lieutenant in the Air Force. 10 U.S.C. § 9353.

The nominating process. Each Senator and each Representative in Congress is entitled to nominate up to five individuals to attend each of the service academies at any one time.* 10 U.S.C. §§ 4342(a)(3),(4); 6954(a)(3),(4); 9342(a)(3),(4). A Senator's nominees must be from the same State as the Senator, and a Representative's nominees must be from that Representative's congressional district. Id. The Delegate to the House of Representatives from the District of Columbia is also entitled to select five nominees to attend each academy from the District. 10 U.S.C. §§ 4342(a)(5), 6954(a)(5), 9342(a)(5). The Delegates in Congress from the Virgin Islands and Guam are each allowed one nominee to each of the academies at any one time. 10 U.S.C. §§ 4342(a)(6),(9); 6954(a)(6),(9); 9342(a)(6),(9). The Resident Commissioner from Puerto Rico has five slots at each academy, and an additional slot at each is given the Governor of Puerto Rico. 10 U.S.C. §§ 4342(a)(7), 6954(a)(7), 9342(a)(7). The Secretary of each service may nominate one person from American Samoa to that service's academy on the recommendation of the Governor of American Samoa. 10

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*The statutes governing the United States Coast Guard Academy do not provide for nomination of cadets by members of Congress. No statute requires that any proportion of Coast Guard Academy cadets be domiciled in particular jurisdictions. See generally 14 U.S.C. §§ 181-195, especially § 182.

U.S.C. § 4342(a)(10), 6954(a)(10), 9342(a)(10). (The Governor of the Canal Zone was also entitled to one nominee at each academy. 10 U.S.C. §§ 4342(a)(8), 6954(a)(8), 9342(a)(8).)

Nominees selected from the States and territories by members of Congress and others, as outlined above, account for a large part of the enrollment at each academy. Provision is also made, however, for attendance at each academy of individuals selected by a variety of other methods. See generally 10 U.S.C. §§ 4342, 6954, 9342. Actual appointment of persons to each of the academies is made by the President. 10 U.S.C. §§ 4342(d), 6954(d), 9342(a). Appointment is conditional upon admission to the academy. Id. Admission in turn is dependent upon satisfaction of academic and physical qualification requirements. 10 U.S.C. §§ 4346, 6958, 9346. Thus, nomination to any academy does not ensure admission.

Nominees from the other territories. In 1962 Congress allowed the student body at each service academy to include at any one time one person from Guam, the Virgin Islands, or American Samoa. The candidate for each academy was to be nominated by the Secretary of the concerned service from persons recommended by the territorial governors. Public Law 87-663, 76 Stat. 547. At that time, those governors were all appointed officials.*

In 1973 the statutes were amended to allow Guam, the Virgin Islands, and American Samoa each to have one student at each service academy at any one time. Nomination of students from Guam and the Virgin Islands was henceforth to be made by each territory's Delegate to Congress, rather than by the Secretaries of the concerned services. Public Law 93-171, 87 Stat. 690. Congress had given Guam and the Virgin Islands the right to elect nonvoting Delegates to the House of Representatives in 1972. Public Law 92-271, 86 Stat. 118.

The statutes establishing the authorized strengths of the service academies each continue to allow appointment of one nominee from American Samoa by the Secretary of the respective service on the recommendation of the Governor of American Samoa. Since enactment of those provisions in 1962, Congress has provided for representation of

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*The people of Guam in 1968 were granted the right to elect their own governor. Public Law 90-497, § 1, 82 Stat. 842. The people of the Virgin Islands were granted that right at the same time. Public Law 90-496, § 4, 82 Stat. 837. The people of American Samoa were given a similar right by order of the United States Secretary of the Interior in 1977. Secretarial Order 3009, September 13, 1977. (The Department of the Interior administers American Samoa pursuant to Executive Order 10264, June 29, 1951, which in turn is issued pursuant to the authority granted by Congress in the Act of February 20, 1929, c.281, 45 Stat. 1253, 48 U.S.C. § 1661.)

American Samoa in Congress by a nonvoting Delegate to the House of Representatives. Public Law 95-556, § 1, October 31, 1978, 92 Stat. 2078, 48 U.S.C. § 1731. The Delegate is entitled to the same privileges and immunities as the Delegate from Guam. Id. § 5, 48 U.S.C. § 1735. One of those privileges would appear to be that of nominating candidates for appointment to the service academies, but the governing statutes provide a distinct method of appointment. See 10 U.S.C. §§ 4342(a)(10), 6954(a)(10), 9342(a)(10).

Present applicability.

Officers in the armed forces of the United States must be citizens of the United States. 10 U.S.C. § 532(a)(1). In its January 1982 interim report to Congress, the Commission recommended enactment of legislation to treat citizens of the Northern Mariana Islands as citizens of the United States for purposes of this requirement. In 1983 Congress enacted Public Law 98-94, 97 Stat. 628. Section 1006 of Public Law 98-94 allows citizens of the Northern Mariana Islands to be commissioned as officers in the armed forces of the United States.* No provision has yet been made, however, to allow a citizen of the Northern Mariana Islands to qualify for an officer's commission by attending one of the service academies. The Commission recommends enactment of legislation to allow the Resident Representative for the Northern Mariana Islands to nominate one individual from the Northern Mariana Islands to attend each of the service academies at any one time.

Discussion.

Admission to the United States Military Academy, the United States Naval Academy, and the United States Air Force Academy is an honor for the person admitted. The student at any of the academies is offered a fine education at little or no personal cost, with an officer's commission on graduation. Many academy graduates have gone on not only to serve with distinction in the armed forces of the United States but to distinguish themselves in other areas of endeavor.

The authorized strength of each of the service academies includes, in addition to students from all the States, students from Puerto Rico, Guam, the Virgin Islands, and American Samoa. Adding one student from the Northern Mariana Islands to the authorized strength of each academy will provide the Northern Mariana Islands

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*A citizen of the Northern Mariana Islands otherwise qualified for an officer's commission must indicate "in writing to a commissioned officer of the Armed Forces of the United States an intent to become a citizen, and not a national, of the United States" on termination of the trusteeship. Public Law 98-94, § 1006(a), 97 Stat. 628 (1983). See Covenant § 302.

treatment equivalent to that afforded the other territories. Failure to make such a provision will isolate the Northern Mariana Islands as the only part of the American political family not entitled to at least one slot at each of the academies. The cross-section of our Nation's youth at each academy should include a student from the Northern Mariana Islands.

Adding one student from the Northern Mariana Islands to the authorized strength of each academy would increase the number of students at each academy nominated according to their domicile from 2690 to 2691.

While the population of the Northern Mariana Islands is admittedly small, nomination of students to the academies is not strictly based on the population of the jurisdictions from which they are nominated. A single nominee from the Northern Mariana Islands to each of the academies is not meaningfully disproportionate to the fifteen nominees now allotted the least-populated States or the single nominee now alloted American Samoa at each academy. Finally, each nominee must meet qualification standards for admission, so the quality of the student body will not be diluted by admission of a nominee from the Northern Mariana Islands.

The Northern Mariana Islands has no Senator, Representative, or Delegate in the United States Congress. Section 901 of the Covenant, however, allows appointment or election of a Resident Representative to the United States, pursuant to the Constitution or laws of the Northern Mariana Islands. Article V of the Constitution of the Northern Mariana Islands, in accordance with section 901, provides for election of a representative to the United States "to represent the Commonwealth in the United States and to perform those related duties provided by law." The legislation here proposed lodges in the Resident Representative authority similar to that now exercised by the Delegates to the United States Congress from Guam and the Virgin Islands.* Under the proposed legislation, the Resident Representative would be allowed to nominate one student to attend each of the academies at any one time.

Education at the United States Military Academy, the United States Naval Academy, and the United States Air Force Academy is an important avenue toward a career of service to the Nation. Qualified students from the Northern Mariana Islands should be among those on that avenue.

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*Legislation recommended elsewhere in this report would confer the status of nonvoting Delegate to the United States Congress on the Resident Representative.

Proposed legislative language.

The following language, if enacted by the United States Congress, would implement the Commission recommendation to allow the Resident Representative to the United States for the Northern Mariana Islands to nominate one individual each from the Northern Mariana Islands to attend the United States Military Academy, the United States Naval Academy, and the United States Air Force Academy at any one time:

An Act authorizing nomination of students from the Northern Mariana Islands to attend the United States Military Academy, the United States Naval Academy, and the United States Air Force Academy.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that subsection (a) of section 4342 of title 10, United States Code, is amended by striking the language following clause (10) and substituting therefor the following:

> (11) One cadet from the Northern Mariana Islands, nominated by the Resident Representative to the United States for the Northern Mariana Islands.
>
> Each Senator, Representative, and Delegate in Congress, including the Resident Commissioner from Puerto Rico, and the Resident Representative to the United States for the Northern Mariana Islands are entitled to nominate a principal candidate and nine alternates for each vacancy that is available to him under this section.

Sec. 2. Subsection (f) of section 4342 of title 10, United States Code, is amended to read as follows:

> Each candidate for admission nominated under clauses (3)-(7), (9), (10) and (11) of subsection (a) must be domiciled in the State, or in the congressional district, from which he is nominated, or in the District of Columbia, Puerto Rico, American Samoa, Guam, the Virgin Islands, or the Northern Mariana Islands, if nominated from one of those places.

Sec. 3. Section 4343 of title 10, United States Code, is amended by substituting "clauses (2)-(9) and (11) of section 4342(a)" for "clauses (2)-(9) of section 4342(a)."

Sec. 4. Subsection (a) of section 6954 of title 10, United States Code, is amended by striking the language following clause (10) and substituting therefor the following:

> (11) One from the Northern Mariana Islands, nominated by the Resident Representative to the United States for the Northern Mariana Islands.
>
> Each Senator, Representative, and Delegate in Congress, including the Resident Commissioner from Puerto Rico, and the Resident Representative to the United States for the Northern Mariana Islands are entitled to nominate a principal candidate and nine alternates for each vacancy that is available to him under this section.

Sec. 5. Subsection (a) of section 6956 of title 10, United States Code, is amended to read as follows:

> The Secretary of the Navy shall, as soon as possible after the first of June of each year, notify in writing each Senator, Representative, and delegate in Congress, and the Resident Representative to the United States for the Northern Mariana Islands of any vacancy that will exist at the Naval Academy because of graduation in the following year, or that may occur for other reasons, for which the member or delegate or resident representative is entitled to nominate a candidate and nine alternates.

Sec. 6. Subsection (e) of section 6956 of title 10, United States Code, is amended by substituting "clause (2)-(9) and (11) of section 6954(a)" for "clauses (2)-(9) of section 6954(a)."

Sec. 7. Subsection (b) of section 6958 of title 10, United States Code, is amended to read as follows:

> Each candidate for admission nominated under clauses (3)-(7), (9), (10) and (11) of

section 6954(a) must be domiciled in the State, or in the congressional district, from which he is nominated, or in the District of Columbia, Puerto Rico, American Samoa, Guam, the Virgin Islands, or the Northern Mariana Islands, if nominated from one of those places.

Sec. 8. Subsection (a) of section 9342 of title 10, United States Code, is amended by striking the language following clause (10) and substituting therefore the following:

> (11) One cadet from the Northern Mariana Islands, nominated by the Resident Representative to the United States for the Northern Mariana Islands.
>
> Each Senator, Representative, and Delegate in Congress, including the Resident Commissioner from Puerto Rico, and the Resident Representative to the United States for the Northern Mariana Islands are entitled to nominate a principal candidate and nine alternates for each vacancy that is available to him under this section.

Sec. 9. Subsection (f) of section 9342 of title 10, United States Code, is amended to read as follows:

> Each candidate for admission nominated under clauses (3)-(7), (9), (10) and (11) of subsection (a) must be domiciled in the State, or in the congrssional district, from which he is nominated, or in the District of Columbia, Puerto Rico, American Samoa, Guam, the Virgin Islands, or the Northern Mariana Islands, if nominated from one of those places.

Sec. 10. Section 9343 of title 10, United States Code is amended by substituting "clauses (2)-(9) and (11) of section 9342(a)" for "clauses (2)-(9) of section 9342(a)."

* * *

Conversion of national banks into banks organized under laws of the Northern Mariana Islands; merger of banks organized under laws of the Northern Mariana Islands into national banks.

Recommendation.

Legislation should be enacted to allow a national bank in the Northern Mariana Islands to convert into or consolidate or merge with a bank organized under the laws of the Northern Mariana Islands and to allow a bank organized under the laws of the Northern Mariana Islands to merge into a national bank.

The statutes.

National banks are chartered by the Federal Government. Chapter 2 of title 12 of the United States Code governs the organization, operation, and dissolution of national banks.* State governments may also grant charters to banks.

Present applicability.

Chapter 2 of title 12 applies to the Northern Mariana Islands. Section 41 of title 12 provides that "the National Bank Act and all other Acts of Congress relating to national banks shall, insofar as not locally inapplicable on and after August 1, 1956, apply to Guam." See also 12 U.S.C. §§ 42, 95(b)(2), 95a(3), 202. Chapter 2 is among those laws made applicable to Guam by section 41 and thus made applicable to the Northern Mariana Islands by operation of section 502(a)(1) of the Covenant.

Guam and the Northern Mariana Islands are treated differently from other parts of the United States in an important respect. National banks in Guam and the Northern Mariana Islands may not be converted into State banks as may national banks in "any State, any Territory of the United States, Puerto Rico, or the Virgin Islands,"

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*See the discussion of this chapter in the Title-by-title survey of the United States Code, below.

or in the District of Columbia. 12 U.S.C. §§ 214, 214a.* Nor may State banks be consolidated or merged into national banks in Guam and the Northern Mariana Islands as they may in those other jurisdictions. Id. §§ 215, 215b.**

Discussion.

Why national banks in the Northern Mariana Islands may not convert into or consolidate or merge with banks organized under the laws of the Northern Mariana Islands is not clear. Similarly obscure is why banks organized under the laws of the Northern Mariana Islands may not be merged into national banks. There seems to be no good reason for preventing banks in the Northern Mariana Islands from changing their status in the same way that banks in all other American jurisdictions (except Guam and American Samoa) may change their status. Accordingly, legislation is here proposed to allow national banks in the Northern Mariana Islands to convert into or consolidate or merge with banks organized under the laws of the Northern Mariana Islands and to allow banks organized under the laws of the Northern Mariana Islands to be merged into national banks.

Proposed legislative language.

The following language, if enacted by the United States Congress, would implement this recommendation:

> An Act to allow national banks in the Northern Mariana Islands to convert into, consolidate, or merge with banks organized under the laws of the Northern Mariana Islands and to allow banks organized under the laws of the Northern Mariana Islands to be merged into national banks.

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*The term "Territory" here apparently refers to Alaska and Hawaii, which were not yet States when this legislation became law in 1950. Guam and the Virgin Islands then, as now, were unincorporated but organized territories of the United States. The mention of the Virgin Islands in the legislation without mention of Guam strongly implies that national banks in Guam (and, consequently, in the Northern Mariana Islands) cannot convert into State banks under the legislation.

**Section 215b, like section 214, above, defines "State," to include the "Territories" and the "Virgin Islands" but to omit Guam. Again the implication is that State banks in Guam (and, consequently, in the Northern Mariana Islands) may not be consolidated or merged into national banks under these provisions.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that

Sec. 1. Conversion of national bank into bank organized under laws of the Northern Mariana Islands. Subsection (a) of section 1 of the Act of August 17, 1950, c.729, 64 Stat. 455, as amended (12 U.S.C. § 214(a)), is further amended by deleting "the Virgin Islands," and inserting in lieu thereof "the Virgin Islands, or the Northern Mariana Islands,".

Sec. 2. Merger of bank organized under laws of the Northern Mariana Islands into national bank. Subsection (2) of section 3 of the Act of November 7, 1918, c.209, 40 Stat. 1036, as added by section 20 of Public Law 86-230, 73 Stat. 457 (12 U.S.C. § 215b(2)), is amended by inserting immediately after the phrase "the Virgin Islands," the phrase "the Northern Mariana Islands,".

* * *

Maximum amounts for federally-insured mortgages in the Northern Mariana Islands.

Recommendation.

The Secretary of Housing and Urban Development may increase the maximum amounts for federally-insured mortgages in Alaska, Guam, and Hawaii to allow for high construction costs in those areas. Legislation should be enacted to allow the Secretary similar discretionary authority to increase maximum amounts for federally-insured mortgages in the Northern Mariana Islands, where construction costs also can be substantially higher than prevailing costs in the forty-eight contiguous States.

The statutes.

Title II of the National Housing Act is codified as subchapter II in chapter 13 of title 12 of the United States Code.* Title II is:

> designed to improve housing standards and conditions by utilizing the best available means for achieving a sustained long-term residential construction program with a

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*See also the discussion of this subchapter in the Title-by-title survey of the United States Code, below.

> minimum expenditure of federal funds and a maximum reliance upon private business enterprise. To this end the [Federal Housing Administration (FHA)] insures mortgages on both new and existing one- to four-family homes, on properties destroyed or damaged by major disasters, on single-family homes in suburban and outlying areas and small communities, and on farm homes located on plots of five acres or more adjacent to a public highway. The FHA insures mortgages on large scale rental housing projects which are intended to aid the production of reasonably priced rental accommodations for families and mortgages on cooperative housing. To aid in the elimination of slums and blighted areas, the FHA insures mortgages to assist the financing required for the rehabilitation of existing dwelling accommodations and to assist the financing of housing required to relocate families which might be displaced as a result of slum clearance. Under Title II, the FHA also insures mortgages to aid in the provision of housing accommodations for servicemen in the Armed Forces of the United States.

Federal Banking Law Reporter (CCH) 1572.

Present applicability.

"State" is defined to include Guam and the Trust Territory of the Pacific Islands for purposes of many programs authorized by this subchapter. See 12 U.S.C. §§ 1707(d), 1709 (mortgage insurance); id. § 1713(a)(7) (rental housing mortgage insurance); id. § 1715k(c) (mortgage insurance for housing in urban renewal areas); id. § 1715l(c) (mortgage insurance for housing for low and moderate income families and displaced families); id. § 1715y(b) (mortgage insurance for condominiums).

All of the programs available in Guam by the terms of the authorizing statute or by regulations implementing the authorizing statute are available in the Northern Mariana Islands by operation of section 502(a) of the Covenant.

One statute in subchapter II may not be applicable to the Northern Mariana Islands. Section 1715d of title 12 allows the Secretary of Housing and Urban Development to increase the maximum amounts for federally-insured mortages in Alaska, Guam, and Hawaii to allow for high construction costs in those areas. If this provision is characterized as a banking law, the Secretary already has the authority similarly to increase maximum amounts for federally-insured mortgages in the Northern Mariana Islands. Covenant § 502(a)(1). If the provision is not a banking law, the Secretary's authority to raise maximum amounts does not extend to the Northern Mariana Islands.

Discussion.

Construction costs, particularly for materials, are high in the Northern Mariana Islands, just as they are in nearby Guam and in Alaska and Hawaii. Legislation is here proposed to confirm the authority of the Secretary of Housing and Urban Development to increase the maximum amounts for federally-insured mortgages in the Northern Mariana Islands.

Proposed legislative language.

The following language, if enacted by the United States Congress, would implement this recommendation:

> An Act authorizing the Secretary of Housing and Urban Development to increase maximum amounts for certain federally-insured mortgages in the Northern Mariana Islands.
>
> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that section 214 of the Act of June 27, 1934, c.847, 48 Stat. 1246, as added by section 2(a) of the Act of April 23, 1949, c.89, 63 Stat. 57, and as amended (12 U.S.C. § 1715d), is further amended by deleting "or Hawaii" each time it appears and inserting in lieu thereof, "the Northern Mariana Islands, or Hawaii".

* * *

Insurance of "public unit" accounts in federally-insured savings and loan associations.

Recommendation.

When public funds are invested in federally-insured savings and loan associations, federal law permits establishment of separate, "public unit" accounts so that the maximum insurable amount is not exceeded. Legislation should be enacted to allow the government of the Northern Mariana Islands to take advantage of this provision.

The statutes.

Subchapter IV in chapter 13 of title 12 of the United States Code creates the Federal Savings and Loan Insurance Corporation (FSLIC). The FSLIC, which is supervised by the Federal Home Loan Bank Board, insures savings deposited in savings and loan associations and similar thrift institutions, much as the Federal Deposit Insurance Corporation insures deposits in banks. Individual deposits of up to $100,000 are insured. 12 U.S.C. § 1728(a).

Accounts established by various officers, employees, and agents of Federal, State, and local governments lawfully investing public funds in insured institutions, for purposes of determining whether the amount of the account exceeds the maximum insurable amount, are treated as separate from other accounts established by other officers, employees, or agents of the same government. 12 U.S.C. § 1724(b). Thus, a government may have on deposit in a single savings and loan institution funds well in excess of $100,000. So long as those funds are deposited in distinct "public unit" accounts, none of which exceeds $100,000, all of the funds are insured.

Present applicability.

The FSLIC is reguired to insure the accounts of all federally-chartered savings and loan associations and savings banks. 12 U.S.C. § 1726(a). Federally-chartered savings and loan associations may be organized in the Northern Mariana Islands. 12 U.S.C. §§ 1464, 1466; Covenant § 502(a). Accordingly, the FSLIC is also required to extend its services to the Northern Mariana Islands.

The FSLIC is also permitted to insure the accounts of savings and loan associations, building and loan associations, homestead associations, and cooperative banks organized and operated according to the laws of a territory or possession in which they are chartered or organized. 12 U.S.C. § 1726(a). Since Guam is a territory or possession, the accounts of eligible institutions in Guam may be insured by the FSLIC. By operation of section 502(a) of the Covenant, so too may the accounts of eligible institutions in the Northern Mariana Islands.

The government of the Northern Mariana Islands is not included in the list of governments entitled to establish public unit accounts, either directly or by operation of the Covenant. 12 U.S.C.

§ 1724(b).* (The government of "any Territory" is included in the list. "Territory" in this context must be considered to refer only to an incorporated territory of the United States, since unincorporated Puerto Rico and the Virgin Islands are listed separately. Guam is not included in the list and is not an incorporated "Territory." 48 U.S.C. § 142la. Accordingly, public unit accounts are not available to the government of Guam and are not made available to the Northern Mariana Islands by operation of the Covenant.)

Discussion.

Public unit accounts enable a government to deposit funds in a federally-insured savings and loan institution without losing federal insurance coverage on total deposits of that government in that institution in excess of $100,000. So long as individual public unit accounts do not exceed $100,000, the total of that government's deposits will remain insured.

The government of the Northern Mariana Islands should have the same ability as do the governments of all States and of Puerto Rico and the Virgin Islands to establish separate public unit accounts in federally-insured savings and loan institutions.**

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*Another provision in subchapter II specifies a $100,000 per account maximum insurable amount for public-funds accounts maintained by officers, employees, or agents of any territory or possession in an insured institution in that territory or possession. 12 U.S.C. § 1728(d)(1)(iv). Since Guam is a territory or possession, by operation of section 502(a) of the Covenant, the $100,000 maximum applies to public-funds accounts maintained by officers, employees, or agents of the Northern Mariana Islands at insured institutions within the Northern Mariana Islands. Section 1728(d)(1)(iv) does not explicitly allow such accounts to be treated separately from other accounts established by other officers, employees, or agents of the Northern Mariana Islands for purposes of determining whether funds on deposit exceed the maximum insurable amount. Further, section 1728(d)(1)(iv) applies only to Northern Mariana Islands public accounts maintained at insured institutions within the Northern Mariana Islands. Section 1724(b), if made applicable to Northern Mariana Islands public accounts, would permit those accounts to be maintained at an insured institution within the Northern Mariana Islands or anywhere else in the United States.

**The Commission's mandate does not extend beyond recommending changes in federal laws as they apply to the Northern Mariana Islands. Accordingly, no recommendation is here made as to whether the governments of Guam and American Samoa ought to have similar authority to establish public unit accounts.

Proposed legislative language.

The following language, if enacted by the United States Congress, would implement this recommendation:

> An Act to allow officers, employees, and agents of the government of the Northern Mariana Islands and its political subdivisions to establish public unit accounts in federally-insured savings and loan institutions.
>
> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that subsection (b) of section 401 of the Act of June 27, 1934, c.847, 48 Stat. 1246, as amended (12 U.S.C. § 1724(b)), is further amended by inserting immediately after the phrase "of the Virgin Islands," the phrase "of the Northern Mariana Islands,".

* * *

Farm Credit System.

Recommendation.

Legislation should be enacted to allow the Federal Farm Credit Board to extend the services of the Farm Credit System to the Northern Mariana Islands if the Board determines extension to be feasible.

The statutes.

> The Farm Credit System
>
> is comprised of Federal land banks and Federal land bank associations, Federal intermediate credit banks and production credit associations, and banks for cooperatives. Initially capitalized by the United States, the entire System is now owned by its users.
>
> The System is designed to provide adequate and dependable credit and closely related services to farmers, ranchers, producers or harvesters of aquatic products; persons engaged in providing on-the-farm services; rural homeowners; and to associations of farmers, ranchers, or producers or harvesters of aquatic products or federations of such associations which operate on a cooperative basis and are engaged in marketing, processing, supply or business service functions for the benefit of their members.

U.S. Government Manual 477 (1982). The Farm Credit Administration supervises the Farm Credit System. 12 U.S.C. § 2252.

Most federal laws governing the Farm Credit System are found in chapter 23 of title 12 of the United States Code. Chapter 23 "represents a complete rewriting of the farm credit laws and a fundamental reworking of the statutory basis for the farm credit system." Historical Note following 12 U.S.C. § 2001.

Other provisions in title 12 affecting the Farm Credit System are found in chapter 7, Farm Credit Administration; chapter 7A, Agricultural Marketing; and chapter 7B, Regional Agricultural Credit Corporations.*

Present applicability.

The Farm Credit System does not extend to Guam or the Northern Mariana Islands. Only Puerto Rico, of the jurisdictions outside the fifty States and the District of Columbia, is expressly within the System, although the Federal Farm Credit Board is authorized to take action to include the Virgin Islands within the System. 12 U.S.C. § 2221. See also 36 Op. Att'y Gen. 326 (1930).

Discussion.

The Federal Farm Credit Board in 1980 was given authority to extend the Farm Credit System to the Virgin Islands if extension is determined to be feasible under regulations of the Farm Credit Administration. Public Law 96-952, § 501, 94 Stat. 3437, 12 U.S.C. § 2221.** See also House Report 96-1287, at 23 (1980), reprinted in 1980 U.S. Code Cong. & Ad. News 7095, 7106. The United States promises, in section 703(a) of the Covenant, to make available to the

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*Most of chapter 7 of title 12 was repealed by Public Law 92-181, 85 Stat. 583 (1971), which enacted chapter 23. A few provisions of chapter 7 remain in effect. See 12 U.S.C. §§ 773, 931a, 1016(h), 1020c-1, 1020n-1, 1023a, 1131j. Chapter 7A, originally subchapter VII of chapter 7, also remains in effect, as does part of chapter 7B, originally subchapter VIII of chapter 7. Chapter 8, Adjustment and Cancellation of Farm Loans, and chapter 10, Local Agricultural-credit Corporations, Livestock-loan Companies and Like Organizations; Loans to Individuals to Aid Information or to Increase Capital Stock, also govern aspects of the Farm Credit System.

**The Federal Farm Credit Board has not yet extended the system to the Virgin Islands. See 12 C.F.R. §§ 600.10(a), 613.3010 (1984).

Northern Mariana Islands the full range of programs and services available to the territories of the United States, including the Virgin Islands. Although commercial agriculture in the Northern Mariana Islands is limited at this time, it is thought to have substantial potential for development. The Northern Mariana Islands is particularly well-situated to provide tropical produce to Japan and other non-tropical industrial nations in the western Pacific area. Access to the Federal Farm Credit system could contribute to realization of that potential and to fulfillment of the obligation of the United States to assist in the economic development of the Northern Mariana Islands. Covenant § 701. Accordingly, legislation is here proposed to give the Federal Farm Credit Board authority, like that given in the case of the Virgin Islands, to extend the Farm Credit System to the Northern Mariana Islands if extension is determined to be feasible under regulations of the Farm Credit Administration.

Proposed legislative language.

The following language, if enacted by the United States Congress, would implement this recommendation:

> An Act to authorize the Federal Farm Credit Board to extend the Farm Credit System to the Northern Mariana Islands.
>
> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that section 5.0 of Public Law 92-181, 85 Stat. 583, as amended by section 502 of Public Law 96-592, 94 Stat. 3437 (12 U.S.C. § 2221) is further amended by inserting the phrase "and the Northern Mariana Islands" after the phrase "the Virgin Islands of the United States" each time it appears.

* * *

Escheat of abandoned money orders and traveler's checks.

Recommendation.

Legislation should be enacted to allow the Northern Mariana Islands, like the States of the United States, to become the owner of abandoned or unclaimed money orders, traveler's checks, and similar instruments purchased in the Northern Mariana Islands.

The statutes.

Chapter 26 of title 12 of the United States Code provides for escheat of any money order, traveler's check, or similar instrument, if the purchaser cannot be found, to the State in which it was

purchased pursuant to the escheat laws of that State. (Escheat laws, in general, give to the State ownership of abandoned or unclaimed property.)

Before this chapter was enacted, abandoned or unclaimed money orders, traveler's checks, and similar instruments escheated to the State in which the bank or other issuer of the obligation to pay was domiciled. See 120 Cong. Rec. 4673, 4679, 19206 (1974).

Present applicability.

The geographic reach of this chapter is defined neither by the statutes nor by their legislative history. In the absence of any such definition, the chapter is not applicable to Guam or the Northern Mariana Islands.

Discussion.

There is no reason why the Northern Mariana Islands should not be permitted, like the States, to become the owner of abandoned or unclaimed money orders, traveler's checks, and similar instruments purchased in the Northern Mariana Islands. Legislation is here recommended to make this chapter applicable to the Northern Mariana Islands.

Proposed legislative language.

The following language, if enacted by the United States Congress, would implement this recommendation:

> An Act to treat the Northern Mariana Islands as a State for purposes of the law permitting a State to become the owner of abandoned money orders or traveler's checks purchased in that State.
>
> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the Northern Mariana Islands shall be considered a "State" for purposes of sections 601, 602, and 603 of Public Law 93-495, 88 Stat. 1500 (12 U.S.C. §§ 2501, 2502, and 2503).

* * *

Northern Mariana Islands banks' participation in domestic markets.

Recommendation.

Legislation should be enacted to make clear that banks organized under the laws of the Northern Mariana Islands are eligible to establish Federal branches or agencies.

The statutes.

Chapter 32 of title 12 of the United States Code allows a foreign bank to establish one or more Federal branches or agencies in any State in which it is not operating a branch or agency pursuant to State law if it is not prohibited from doing so by State law. Foreign banks may only engage in interstate banking to the extent domestic banks are permitted to so engage. 12 U.S.C. § 3103. Federal branches of foreign banks accepting any deposits of less than $100,000 are generally required to obtain insurance from the Federal Deposit Insurance Corporation. Id. § 3104. And Federal branches and Federal agencies of foreign banks are generally subject to the supervisory authority of the Board of Governors of the Federal Reserve System. Id. § 3105.

Present applicability.

Chapter 32 defines a "foreign bank" to include banks "organized under the laws of a foreign country, a territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands." 12 U.S.C. § 3101(7). "State," on the other hand, is defined to include only the fifty States and the District of Columbia.* Because this chapter was enacted after January 9, 1978, the treatment of banks organized under the laws of Guam as foreign banks does not operate to make banks organized under the laws of the Northern Mariana Islands foreign banks for purposes of this chapter. It is possible to view banks organized under the laws of the Northern Mariana Islands as banks organized under the laws of a foreign country. See, for example, Callas v. United States, 152 F. Supp. 17 (E.D.N.Y. 1957), affirmed, 253 F.2d 838 (2d. Cir. 1958), certiorari denied, 357 U.S. 936 (1958) (Trust Territory of the Pacific Islands is a foreign country for purposes of the Federal Tort Claims Act). On termination of the trusteeship, however, the Northern Mariana Islands will clearly be under the sovereignty of the United States. Covenant §§ 101, 1003(c). Section 105 of the Covenant requires that legislation enacted after January 9, 1978, that is not applicable to the several States specifically name the Northern Mariana Islands if it is to apply to the Northern Mariana Islands. While chapter 32 is certainly applicable to the several States, it applies differently to

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*These definitions are similar to those in chapter 6 of title 12, governing foreign banking.

the States than it does to the territories. The Northern Mariana Islands will become a territory of the United States on termination of the trusteeship. Section 105 of the Covenant may operate at that time to prevent banks organized under the laws of the Northern Mariana Islands from being treated as foreign banks eligible to establish Federal branches or agencies pursuant to this chapter.

Discussion.

Banks operating in foreign countries and banks operating in territories of the United States are treated identically for purposes of chapter 32. The Northern Mariana Islands, moving from the status of a foreign country to that of a territory, should not be treated differently. Chapter 32 allows a reading permitting banks organized under the laws of the Northern Mariana Islands to be treated as foreign banks eligible to establish Federal branches or agencies, but it also allows a contrary reading. Section 105 of the Covenant raises further uncertainties as to the chapter's applicability to the Northern Mariana Islands after termination of the trusteeship. These ambiguities should be resolved so that banks organized under the laws of the Northern Mariana Islands are clearly eligible to establish Federal branches or agencies pursuant to chapter 32, both before and after termination of the trusteeship.

Proposed legislative language.

The following language, if enacted by the United States Congress, would implement this recommendation:

> An Act to amend the application of the International Banking Act of 1978 to the Northern Mariana Islands.
>
> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that paragraph (7) of subsection (b) of section 1 of Public Law 95-369, 92 Stat. 67 (12 U.S.C. § 3101(7)), is amended by deleting "or the Virgin Islands," and inserting in lieu thereof "the Virgin Islands, or the Northern Mariana Islands,".

* * *

Surveillance of ocean areas.

Recommendation.

Congress should emphasize to the executive branch of the United States Government the importance of patrolling ocean areas within two hundred miles of the coastlines of the Northern Mariana Islands and

monitoring foreign economic activity within that area. Congress should also ensure that sufficient funds are appropriated to the executive branch so that the United States Coast Guard can patrol these waters frequently. Legislation should be enacted authorizing the Coast Guard to utilize, on a reimbursable basis or otherwise, the personnel and resources of other federal agencies and of the government of the Northern Mariana Islands in patrolling these waters.

The statutes.

The United States Coast Guard now has statutory authority to "enforce or assist in the enforcement of all applicable Federal laws on and under the high seas and waters subject to the jurisdiction of the United States." 14 U.S.C. § 2. "The Coast Guard may make inquiries, examinations, inspections, searches, seizures, and arrests upon the high seas and waters over which the United States has jurisdiction, for the prevention, detection, and suppression of violations of laws of the United States." Id. § 89.*

Present applicability.

The Coast Guard's current statutory law-enforcement authority extends to the high seas and waters adjacent to the Northern Mariana Islands. (The Northern Mariana Islands and its territorial waters are subject to the jurisdiction of the United States. Trusteeship Agreement, Art. 3; Covenant §§ 101, 1003(c).)

For many years, Coast Guard vessels have made occasional patrol voyages through the Trust Territory, including the Northern Mariana Islands.

Discussion.

Opposition to application of the Magnuson Fishery Conservation and Management Act to the Northern Mariana Islands is widespread in the Northern Mariana Islands. One of the reasons for this opposition is that the Federal Government is widely perceived as making little effort to ensure that the Act is enforced in waters adjacent to the

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*In addition, the Coast Guard is responsible for enforcement of the Magnuson Fishery Conservation and Management Act (FCMA). 16 U.S.C. § 1861(a). In a separate recommendation, however, the Commission has proposed that the FCMA not apply to waters adjacent to the Northern Mariana Islands.

Northern Mariana Islands. Foreign fishing vessels are seen much more frequently in those waters by residents of the Northern Mariana Islands than are Coast Guard vessels. Those foreign vessels may be engaged in no illegal activity: The principal fish sought in those waters is tuna, and the United States regards the taking of tuna within the exclusive economic zone as legal, so long as it is done outside territorial waters. Without effective surveillance, however, the residents of the Northern Mariana Islands do not know whether foreign vessels are intruding in territorial waters, whether they are taking tuna or other fish in those waters, or whether they are taking other fish in the exclusive economic zone. Anecdotal evidence suggests that these vessels not only trespass in the territorial waters of the Northern Mariana Islands but even send landing parties onto uninhabited islands of the Northern Marianas chain.*

The resources available to the Coast Guard in the western Pacific are admittedly scanty. A Coast Guard cutter and a buoy tender based on Guam are assigned to patrol not only the Northern Mariana Islands but also the entire Trust Territory of the Pacific Islands. The Trust Territory of the Pacific Islands covers an ocean area larger than the forty-eight contiguous States of the United States. See New Buoys Light the Way for Ships, Marianas Variety, February 18, 1983, at 5.

The Northern Mariana Islands is in the process of becoming part of the American political family, under the sovereignty of the United States. Covenant § 101. As such, its resources are entitled to the same protection given the resources of other areas under the jurisdiction of the United States. The Commission does not suggest the level of protection that should be provided for the ocean areas by the Coast Guard. The Commission believes, however, that current protection of the resources of the Northern Mariana Islands, including the resources within two hundred miles of its coastlines, is inadequate.

The legislation here proposed declares the need for increased Coast Guard surveillance of ocean areas within two hundred miles of the coastlines of the Northern Mariana Islands. The legislation also allows the Coast Guard to utilize, on a reimbursable basis or otherwise, the personnel and resources of other federal

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*Somewhat unsettling to residents of the Northern Mariana Islands are suggestions that the United States has agreed with Japan that Japan should be principally responsible for the defense of sea lanes in the western Pacific between Guam and Japan. The Northern Mariana Islands, of course, are directly between Guam and Japan. See What's Guam's Role in Sea-Lane Defense, Pacific Daily News (Guam), March 15, 1983, at 20; Japanese to Study Guarding Sea Lane, New York Times, January 21, 1983, at A4.

agencies--including the Department of Defense--and of the government of the Northern Mariana Islands to carry out that surveillance.*

Proposed legislative language.

The following language, if enacted by the United States Congress, would implement this recommendation:

An Act to provide for increased surveillance of the coastal waters and exclusive economic zone adjacent to the Northern Mariana Islands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the Congress finds and declares that:

(a) The Northern Mariana Islands, on termination of the Trusteeship Agreement between the United States and the United Nations, will become a self-governing commonwealth in political union with and under the sovereignty of the United States, pursuant to section 101 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (as approved by Public Law 94-241, 90 Stat. 263 (1976)).

(b) The United States is obligated to protect the resources of the Northern Mariana Islands, including those resources found within two hundred miles of the coastlines of the Northern Mariana Islands, against unlawful exploitation by nationals or residents of other nations.

(c) The United States, to fulfill its obligation to the people of the Northern Mariana Islands, should increase its surveillance of all ocean areas within two hundred miles of the coastlines of the Northern Mariana Islands. In particular, the United States should ensure that all applicable federal laws, including those governing the exploitation of marine resources, are enforced within those areas.

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*The legislative language allowing the Coast Guard to utilize the personnel and resources of other agencies, including the Department of Defense, is modelled on section 1861(a) of title 16, United States Code.

Sec. 2. The Secretary of the Department in which the Coast Guard is operating may, by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment (including aircraft and vessels) and facilities of any other Federal agency, including all elements of the Department of Defense, and of the Government of the Northern Mariana Islands in patrolling waters within two hundred miles of the coastlines of the Northern Mariana Islands.

* * *

Investment companies.

Recommendation.

The Investment Company Act of 1940, which requires registration of mutual funds and other investment companies and otherwise regulates their activities, is now applicable to the Northern Mariana Islands. Legislation should be enacted to exempt investment companies organized and doing business only in the Northern Mariana Islands from the provisions of this Act. A similar exemption already exists for investment companies organized and doing business only on Guam or only in any other single territory of the United States.

The statutes.

Congress enacted the Investment Company Act of 1940, chapter 2D of title 15 of the United States Code, to control improper investments and securities trading abuses by investment companies, such as mutual funds, and investment advisers. All investment companies and most investment advisers must register with the Securities and Exchange Commission (SEC) in order to engage in securities transactions using the mails or any means of interstate commerce. 15 U.S.C. §§ 80a-7, 80a-8, 80b-3. A wide variety of acts and practices are proscribed by this chapter in an attempt to prevent investment companies and advisers from taking unfair advantage of investors.

Present applicability.

"State" is defined, for purposes of chapter 2D, to include the possessions of the United States. 15 U.S.C. §§ 80a-2(a)(39); 80b-2(a)(19). Guam is a possession of the United States. Accordingly, by operation of section 502(a)(2) of the Covenant, the Northern Mariana Islands is a "State" for purposes of chapter 2D.

Investment companies organized and doing business in a possession of the United States are exempt from chapter 2D so long as

they do not issue securities to a resident of another State. 15 U.S.C. § 80a-6(a)(1). Although investment companies organized and doing business on Guam are eligible for this exemption, chapter 2D applies to the Northern Mariana Islands as it does to the several States. Covenant § 502(a)(2). Accordingly, all investment companies organized and doing business in the Northern Mariana Islands must comply with the registration and other requirements of chapter 2D.

Discussion.

Investment companies organized and doing business solely in the Northern Mariana Islands should be exempt from the provisions of chapter 2D, just as are similar firms organized and doing business solely on Guam (or in any other single territory of the United States). There may be good reasons for subjecting all investment companies in the territories to the extensive regulation imposed by this chapter. Subjecting investment companies in the Northern Mariana Islands to that regulation while exempting similar firms on Guam would give the firms on Guam an unfair competitive advantage over their counterparts in the Northern Mariana Islands.

The exemption from chapter 2D for investment companies in particular territories is lost if the company sells its shares to a resident of any State or territory other than that in which the company is organized. 15 U.S.C. § 80a-6(a)(1). Consequently, the exemption does not provide a loophole through which residents of other parts of the United States can escape the operation of this chapter.

Legislation is here proposed to grant investment companies in the Northern Mariana Islands the same exemption from chapter 2D enjoyed by investment companies on Guam and in the other territories.*

Proposed legislative language.

The following language, if enacted by the United States Congress, would implement this recommendation:

> An Act to exempt certain investment companies in the Northern Mariana Islands from the Investment Company Act of 1940.
>
> Be it enacted by the Senate and House of Representatives of the United States of America in Congress

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*The SEC could grant this exemption through exercise of its regulatory authority. 15 U.S.C. § 80b-6a. See 17 C.F.R. §§ 275.0 et seq. (1984).

assembled, that section 6 (a)(1) of the Investment Company Act of August 22, 1940, c. 686, 54 Stat. 789 (15 U.S.C. § 80a-6(a)(1)), is amended by inserting "the Northern Mariana Islands," immediately before "the Virgin Islands,".

* * *

Automobile Dealers Day in Court Act.

Recommendation.

Federal law protects automobile dealers in the United States against certain unfair practices by automobile manufacturers in the performance or termination of franchise agreements. Legislation should be enacted to extend the same protections to automobile dealers in the Northern Mariana Islands.

The statute.

Chapter 27 of title 15 of the United States Code contains the Automobile Dealers Day in Court Act. That Act authorizes an automobile dealer to bring a lawsuit against an automobile manufacturer if the manufacturer fails to act "in a fair and equitable manner" in performing or terminating a franchise agreement between the manufacturer and that dealer. The Act is intended to counterbalance the economic advantages which manufacturers have over their dealers.

Present applicability.

"Automobile dealer" is defined, for purposes of chapter 27, to include any dealer "resident in the United States or in any Territory thereof or in the District of Columbia." 15 U.S.C. § 1221(c). Any automobile manufacturer "engaged in commerce" is subject to the Act. Id. § 1221(a), (b). "Commerce" is defined to include commerce among the several States, in any Territory of the United States, and between any State or Territory and any foreign nation. Id. § 1221(d).

Chapter 27 was enacted in 1956. At that time, the Organic Act of Guam provided that federal legislation did not apply to Guam unless it applied to Guam by name or by use of the term "possession." Act of August 1, 1950, c.512, § 25(b), 64 Stat. 390, 48 U.S.C.A. § 1421c(b) (1952), repealed by Public Law 90-497, § 7, 82 Stat. 842 (1968). Chapter 27 is consequently not available to automobile

dealers resident on Guam* and is not made available to automobile dealers resident in the Northern Mariana Islands by operation of the Covenant.

Discussion.

Automobile dealers in the Northern Mariana Islands, are distant from manufacturers and sell in a market extremely limited by the total population of approximately 17,000 persons in the Northern Mariana Islands. They are thus even more at a disadvantage in bargaining with manufacturers than are dealerships in other parts of the United States. Legislation should be enacted to give automobile dealers in the Northern Mariana Islands the same protection against threats, coercion, and intimidation given dealers in the States and Territories of the United States. Legislation is here proposed to

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*One passage in the legislative history of chapter 27 indicates Congress may have intended "Territory" to encompass any area under the jurisdiction of the United States:

> This amendment limits the right to bring suit in the district courts of the United States to dealers resident in the United States or its Territories. The record before the committee was concerned only with coercive practices by manufacturers with respect to the United States dealers. The committee has no information with respect to such practices involving dealers situated in foreign countries.

House Report 2850, 84th Cong., 2d Sess. (1956), reprinted at 1956 U.S. Code Cong. & Ad. News 4596, 4601. Further, in Volkswagen Interamericana, S.A. v. Rohlsen, 360 F.2d 437 (1st Cir. 1966), certiorari denied, 385 U.S. 919 (1966), the court held the chapter's remedies available to an automobile dealer in the Virgin Islands without discussing whether the Virgin Islands is a "Territory" within the meaning of the chapter.

The Virgin Islands and Guam were both organized, but unincorporated, territories at the time chapter 27 was enacted. The holding of the Rohlsen case and the rather tentative passage from the legislative history of chapter 27 might be sufficient to support the applicability of the chapter to automobile dealers resident in Guam in the absence of the requirement imposed by the Organic Act of Guam (that Guam be mentioned by name or by use of the term "possession" in federal laws applicable to Guam). Because of that requirement, however, neither Rohlsen nor the legislative history can be read to make chapter 27 applicable to Guam.

provide that protection.*

Proposed legislative language.

The following language, if enacted by the United States Congress, would implement this recommendation:

> An Act to make the Automobile Dealers Day in Court Act applicable to the Northern Mariana Islands.
>
> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that section 1 of the Act of August 8, 1956, 70 Stat. 1125 (15 U.S.C. § 1221), is amended by adding thereto a new subsection to read as follows:
>
> (f) The term "Territory" shall include the Northern Mariana Islands.
>
> * * *

Fishery trade officers; Department of Commerce.

Recommendation.

The United States Department of Commerce, among other functions, is given the duty "to foster, promote, and develop the foreign and domestic commerce [and] the mining, manufacturing, and fishery industries of the United States." In addition, the Secretary of Commerce appoints fishery trade officers to serve abroad to "promote United States fishing interests." Legislation should be enacted to confirm and ensure that the Northern Mariana Islands is considered part of the United States for purposes of these provisions.

The statutes.

Chapter 40 of title 15 of the United States Code establishes the United States Department of Commerce.

> The Department of Commerce encourages, serves, and promotes the Nation's international trade, economic growth, and technological advancement. Within this framework and

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*The proposed legislation does not extend chapter 27 to Guam nor does it address the applicability of the chapter to other offshore areas such as American Samoa. This Commission's mandate is limited to recommending changes in the applicability of federal laws only to the Northern Mariana Islands.

> together with a policy of promoting the national interest through the encouragement of the competitive, free enterprise system, the Department provides a wide variety of programs. It offers assistance and information to help increase exports, administers programs to prevent unfair foreign trade competition, provides social and economic statistics and analyses for business and government planners, assists in the development and maintenance of the U.S. merchant marine, provides research and support for the increased use of scientific, engineering, and technological development, grants patents and registers trademarks, provides assistance to promote domestic economic development, seeks to improve understanding of the Earth's physical environment and oceanic life, promotes travel to the United States by residents of foreign countries, and assists in the growth of minority businesses.

U.S. Government Manual 131 (1982).

Present applicability.

Chapter 40 establishes an agency within the executive branch of the Federal Government. The agency's geographic jurisdiction is coextensive with the geographic applicability of the laws it administers. Many of those laws apply in the Northern Mariana Islands.

Of particular interest to the Northern Mariana Islands is a provision authorizing the appointment of fishery trade officers "who shall serve abroad to promote United States fishing interests." 15 U.S.C. § 1511b(a). In effect, these officers are "salesmen for American fish products." House Report 96-1243, part II, at 37 (1980). (One such officer is assigned to Tokyo. Id. § 1511b(b).) Whether fishing interests in the territories and possessions of the United States, in general, and in the Northern Mariana Islands, in particular, are considered United States fishing interests for purposes of this provision is not specified.*

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*Fishery trade officer positions were established by section 211 of the American Fisheries Promotion Act, title II of Public Law 96-561, 94 Stat. 3275, 3287, 3290-91 (1980). Other provisions in that Act are specifically applicable to the Northern Mariana Islands. See id. §§ 210, 220. Those provisions, like section 211, are generally concerned with fisheries, but are amendments to other existing legislation. Section 211 creates a new program and does not amend existing legislation. A conclusion that fishery trade officers must represent the fisheries interests of the Northern Mariana Islands because other provisions in the American Fisheries Promotion Act apply to the Northern Mariana Islands is thus not strongly supported by the language of that Act.

The Department of Commerce is also assigned the duty "to foster, promote, and develop the foreign and domestic commerce, [and] the mining, manufacturing, and fishery industries of the United States." Id. § 1512. Whether the territories and possessions, in general, or the Northern Mariana Islands, in particular, are considered as part of the United States for purposes of this provision is likewise not specified.

Discussion.

The duties of the Department of Commerce to develop the commerce and industry of the United States and of the Department's fishery trade officers to promote United States fishing interests may easily be construed to encompass the commercial, industrial, and fishing interests of the Northern Mariana Islands. But the commercial, industrial, and fishing interests of the Northern Mariana Islands might just as easily be ignored.*

The Northern Mariana Islands is less developed economically than the States of the United States and thus has a correspondingly greater need for the assistance of the Department of Commerce. The fishing industry of the Northern Mariana Islands, seen as one of the more promising avenues to economic development, may stand particularly to benefit from the efforts of the fisheries trade officers, especially the officer in Japan, which is relatively close to the Northern Mariana Islands and with which the Northern Mariana Islands has longstanding ties.

Legislation is here recommended to confirm and ensure that the Northern Mariana Islands is considered part of the United States for purposes of these provisions. The proposed legislation is not intended to belittle past efforts of the Department of Commerce to assist in the economic development of the Northern Mariana Islands. See, for example, Investment Team Arriving, Pacific Daily News (Guam), Focus supplement, August 3, 1984, at 1; Pacific Basin Development Conference, Economic Growth and Development Through Unity 1, 4-5, 26 (1980). Rather, the intention is to insure that the commercial, industrial, and fishing interests of the Northern Mariana Islands will always be considered as legitimate beneficiaries of the efforts by the Department and its fisheries trade officers. Enactment of the recommended legislation is consistent with the obligation of the United States, pursuant to section 701 of the Covenant, to assist in the economic development of the Northern Mariana Islands.

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*The same is true for the commerce, industry, and fishing interests of Guam and other territories and possessions. This Commission's mandate, however, extends only to recommending changes in federal legislation as it applies to the Northern Mariana Islands.

Proposed legislative language.

The following language, if enacted by the United States Congress, would implement this recommendation:

> An Act to ensure that commercial, industrial, and fishing interests in the Northern Mariana Islands are promoted by the United States Department of Commerce and its fisheries trade officers.
>
> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the Northern Mariana Islands shall be considered as part of the United States for purposes of section 211 of Public Law 96-561, 94 Stat. 3275 (15 U.S.C. § 1511b), and section 3 of the Act of February 14, 1903, c. 552, 32 Stat. 825, as amended (15 U.S.C. § 1512).

* * *

Restrictions on garnishment.

Recommendation.

Legislation should be enacted to clarify and confirm the applicability to the Northern Mariana Islands of provisions in the Consumer Credit Protection Act restricting the garnishment of wages.

The statutes.

Subchapter II of chapter 41 of title 15 of the United States Code contains title II of the Consumer Credit Protection Act. Subchapter II restricts the ability of a creditor to obtain part of a debtor's wages by court order to pay off a debt. No more than 25 percent of the debtor's wages or no more than the amount by which the debtor's wages exceed thirty times the federal minimum wage, whichever is less, may be taken. If the debt is for support of another person pursuant to court order, a larger percentage may be taken. The restrictions do not apply to State or federal tax debts or to certain debts under the jurisdiction of a bankruptcy court.

A principal purpose of the restrictions on wage garnishment is to reduce the number of wage earners filing for bankruptcy under the federal bankruptcy laws. House Report 1040, 90th Cong., 1st Sess., at 20-21 (1968).

Present applicability.

Neither subchapter II nor regulations issued thereunder, 29 C.F.R. part 870 (1984), specify the jurisdictions in which the subchapter is applicable.

No court of the United States may authorize any garnishment in violation of this subchapter. 15 U.S.C. § 1673(c). The District Court for the Northern Mariana Islands is a court of the United States. 48 U.S.C. § 1694. Accordingly, that court may not enforce any such garnishment.

No State court or officer or agency may authorize any garnishment in violation of the subchapter. "State," however, is not defined. The legislative history of subchapter II shows that Congress did not intend that unlawful garnishment be allowed in a State court while barred in a federal court in the same jurisdiction. 114 Cong. Rec. 1840 (1968) (statement of Representative Reuss, a prominent supporter of the legislation). Accordingly, "State" should be defined expansively to include any jurisdiction in which a court of the United States sits. Under that rationale, the Northern Mariana Islands is a "State" for purposes of subchapter II and courts and officers of the government of the Northern Mariana Islands may not authorize any garnishment in violation of the provisions of the subchapter.

That conclusion, however, does not mean that all provisions of subchapter II apply in the Northern Mariana Islands. Section 1674 of title 15, for example, imposes a criminal penalty on any employer who discharges an employee because the employee's earnings were garnisheed for a single indebtedness. (Discharge is not prohibited if the employees' earnings are garnisheed a second time for a different debt.) Nothing in subchapter II indicates whether an employer in the Northern Mariana Islands might be subject to this penalty. A statute containing criminal penalties must be construed narrowly, so that persons subject to the statute have fair notice that violations may result in fines or imprisonment. 3 Sutherland, Statutes and Statutory Construction § 59.03 (C. Sands ed. 1974). Consequently, at least the criminal penalty provision in subchapter II should be considered inapplicable to the Northern Mariana Islands.

Discussion.

Subchapter II should be either entirely applicable or entirely inapplicable in the Northern Mariana Islands. A principal purpose of the subchapter is to prevent differing local garnishment laws from altering the uniform applicability of the federal bankruptcy laws to all parts of the United States. 15 U.S.C. § 1671(a)(3). This Commission has concluded that the federal bankruptcy laws should apply in the Northern Mariana Islands as they do elsewhere in the United States. Enactment of legislation to ensure the applicability of all of subchapter II to the Northern Mariana Islands will further that objective.

Applying subchapter II to the Northern Mariana Islands will protect employees in the Northern Mariana Islands from excessive

garnishment and from discharge from employment for garnishment for a single debt. Employers will retain the right to discharge the employee if the employer must make deductions from the employee's earnings for a second debt. Creditors will retain the right to garnishee earnings in payment of debts, but subject to exemption of a portion of those earnings.

The maximum portion of an employee's earnings subject to garnishment is determined partly by reference to the federal minimum wage requirement. 15 U.S.C. § 1673(a). Exempt from garnishment is 75 percent of the employee's net weekly earnings or 75 percent of the federal minimum wage for a 40 hour week, whichever is greater. The federal minimum wage requirement, however, is not generally applicable to the Northern Mariana Islands. Covenant §§ 502(b), 503(c). The federal minimum wage is $3.35 per hour while the minimum wage in the Northern Mariana Islands is $2.15 per hour. 29 U.S.C. § 206(a)(1); 4 Code of the Northern Mariana Islands § 9221 (1984). Thus, if the federal standard applies, only earnings in excess of $100.50 per week are subject to garnishment. If the Northern Mariana Islands standard applies, earnings in excess of $64.50 are subject to garnishment. Although the exemption from garnishment in subchapter II is phrased in terms of earnings, the obvious intent is to allow the employee to retain enough earnings to purchase the necessities of life: food, shelter, and so forth. While earnings in the Northern Mariana Islands are generally less than in other parts of the United States, there is no evidence that the costs of necessities are also less. Accordingly, the proposed legislation, in ensuring the applicability of subchapter II to the Northern Mariana Islands, does not substitute the Northern Mariana Islands minimum wage standard for the federal minimum wage standard in determining earnings exempt from garnishment in the Northern Mariana Islands. The effect of not changing the standard may be to reduce somewhat the availability of consumer credit in the Northern Mariana Islands.

Proposed legislative language.

The following language, if enacted by the United States Congress, would implement this recommendation:

> An Act to clarify and confirm the applicability to the Northern Mariana Islands of provisions in the Consumer Credit Protection Act restricting the garnishment of wages.
>
> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that section 302 of Public Law 90-321, 82 Stat. 146 (1968) (15 U.S.C. § 1672), is amended by adding a new subsection, to read:

(d) The term "State" includes the Northern Mariana Islands; "employers," "employees," and "earnings" within the Northern Mariana Islands are subject to the provisions of this title.

* * *

Fair Credit Reporting Act.

Recommendation.

Legislation should be enacted to clarify and confirm the applicability to the Northern Mariana Islands of the Fair Credit Reporting Act, which regulates the conduct of credit reporting agencies.

The statute.

Subchapter III of chapter 41 of title 15 of the United States Code contains the Fair Credit Reporting Act of 1970. That Act is designed to encourage the use of fair and impartial procedures by firms that evaluate and report on the credit worthiness of consumers and to allow consumers to protect themselves against the circulation of inaccurate information about their credit worthiness. The subchapter does not apply to business credit reports. The purposes for which consumer credit reports may be used and the persons to whom such reports may be disclosed are restricted by the subchapter. Credit reports may not contain stale information. A credit reporting firm must disclose to a consumer on request most information and most information sources regarding that consumer and give the consumer an opportunity to correct or dispute the accuracy of information regarding that consumer's credit worthiness.

Present applicability.

The geographic applicability of subchapter III is not specified by the provisions of the subchapter, by its legislative history, by regulations issued pursuant to the subchapter, or by any court decision.* The Fair Credit Reporting Act, contained in subchapter III, is an amendment of the Consumer Credit Protection Act. Public

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*"Consumer reporting agencies" subject to the subchapter are defined to include those which use "any means or facility of interstate commerce for the purpose of preparing or furnishing" a credit report. 15 U.S.C. § 1681a(f). "Interstate commerce," however, is not defined for purposes of the subchapter.

Law 91-508, § 601, 84 Stat. 1114, 1128 (1970). Prior to the addition of the Fair Credit Reporting Act, the Consumer Credit Protection Act contained only subchapters I and II of this chapter (some provisions of which have been subsequently amended). Subchapter I is clearly applicable to the Northern Mariana Islands.* Subchapter II is probably also applicable, although legislation is recommended above to confirm that applicability. Consequently, subchapter III could be regarded as an amendment to a statute applicable to the Northern Mariana Islands and, therefore, as itself applicable to the Northern Mariana Islands. That conclusion may, however, be attacked on three grounds. First, the subject matter of subchapter III is sufficiently distinct from that of subchapters I and II to make it an amendment in name only. Second, the provision determinative of the geographic applicability of subchapter I is specifically applicable only to that subchapter. 15 U.S.C. § 1602(a). Likewise, the provision from which is drawn the conclusion that subchapter II probably applies to the Northern Mariana Islands is also specific to the other provisions of that subchapter rather than general. Id. § 1673(c). Third, subchapter III contains a criminal penalty for obtaining information from a consumer reporting agency under false pretenses. Id. § 1681q. A statute containing criminal penalties must be construed narrowly, so persons subject to the statute have fair notice that violations may result in fines or imprisonment. 3 Sutherland, Statutes and Statutory Construction § 59.03 (C. Sands ed. 1974). For all these reasons, subchapter III, the Fair Credit Reporting Act, should not be considered applicable to the Northern Mariana Islands as an amendment to the Consumer Credit Protection Act.

Discussion.

A consumer in the Northern Mariana Islands has the same interest as consumers elsewhere in the United States in protecting himself or herself against the circulation of inaccurate information about his or her credit standing. In practice, consumers in the Northern Mariana Islands may have their credit evaluated by credit reporting agencies in the United States. In many cases, those consumers may seek credit from firms in the United States, such as credit card issuers and mail order merchants. Legislation should be enacted to ensure that subchapter III, the Fair Credit Reporting Act, protects the rights of consumers in the Northern Mariana Islands and governs the conduct of any credit reporting agencies established in the Northern Mariana Islands. Legislative language to achieve that end is here proposed.

Proposed legislative language.

The following language, if enacted by the United States Congress, would implement this recommendation:

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*See the discussion of chapter 41 of title 15 of the Title-by-title survey, below.

An Act to clarify and confirm the applicability of the Fair Credit Reporting Act to the Northern Mariana Islands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that subsection (b) of section 603 of Public Law 90-321, 82 Stat. 146 (1968), as added by section 601 of Public Law 91-508, 84 Stat. 1114 (1970) (15 U.S.C. § 1681a(b)), is amended by deleting the final period and adding the following: ", and includes persons in the Northern Mariana Islands.".

* * *

Electronic Fund Transfer Act.

Recommendation.

Legislation should be enacted to clarify and confirm the applicability to the Northern Mariana Islands of the Electronic Fund Transfer Act, which establishes the rights and duties of persons and institutions using electronic fund transfer systems, such as automated bank teller machines and cash dispensing machines.

The statute.

Subchapter VI of chapter 41 of title 15 of the United States Code contains the Electronic Fund Transfer Act. The subchapter regulates electronic fund transfers, for example, fund transfers by means of automated teller machines and cash dispensing machines. The subchapter requires financial institutions to provide written documentation of all such transfers to consumers, limits the consumer's liability for unauthorized electronic fund transfers, and otherwise defines the rights, duties, and liabilities of persons and institutions using electronic fund transfer systems.

Present applicability.

Any State is given the right to seek to substitute its own regulatory regime for that imposed by this subchapter. 15 U.S.C. § 1693r. Because that right is only useful where the subchapter is applicable, the subchapter is applicable in all States.

"State" is defined for purposes of the subchapter to include, among other jurisdictions, "any State, territory, or possession of the United States." Id. § 1693a(10). See also 12 C.F.R. § 205.2(k) (1984). While Guam is a territory or possession of the United States, subchapter VI was enacted after January 9, 1978, the effective date of section 502 of the Covenant. Accordingly, the

subchapter is not made applicable to the Northern Mariana Islands by section 502 of the Covenant.*

Discussion.

Electronic fund transfers enable sums of money, large and small, to be transferred over large distances. Computers and electronic technology are used instead of checks and other paper documents to move money.

Electronic fund transfer technology may be particularly advantageous to the Northern Mariana Islands. The movement of

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*Subchapter VI was enacted as the Electronic Fund Transfer Act, title XX of Public Law 95-630, 92 Stat. 3641, 3728, on November 10, 1978. Section 502 of the Covenant applies to laws "in existence on the effective date of [section 502, January 9, 1978,] and subsequent amendments to such laws." Technically, the Electronic Fund Transfer Act was added to a law in existence on January 9, 1978, the Consumer Credit Protection Act, and might be regarded as a post-January 9, 1978, amendment to that Act. The Consumer Credit Protection Act is largely coextensive with the six subchapters of chapter 41. The applicability of at least two of those subchapters to Guam (and by operation of section 502 to the Northern Mariana Islands) is clear. See the discussions of subchapters I and V of chapter 41 of title 15 in the Title-by-title survey of the United States Code, below. Accordingly, subchapter VI could be regarded as applicable to the Northern Mariana Islands as a subsequent amendment to a statute applicable (at least in part) to Guam and in existence on January 9, 1978.

Three factors militate against the conclusion that subchapter VI is applicable to the Northern Mariana Islands as an amendment to the Consumer Credit Protection Act. First, the subject matter of the Electronic Fund Transfer Act differs substantially from that of other portions of the Consumer Credit Protection Act, making it an amendment in name only. Second, the Electronic Fund Transfer Act contains its own definition of "State," a strong indication that the geographic applicability of the Act is to be determined independently from that of the other parts of the Consumer Credit Protection Act. Third, criminal penalties are imposed for violation of the Electronic Fund Transfer Act. 15 U.S.C. § 1693n. A statute containing criminal penalties must be construed narrowly, so persons subject to the statute will have fair notice that violations may result in fines or imprisonment. 3 Sutherland, Statutes and Statutory Construction § 59.03 (C. Sands ed. 1974). For all these reasons, the Electronic Fund Transfer Act should not be considered applicable to the Northern Mariana Islands as an amendment to the Consumer Credit Protection Act.

checks and other paper documents between the Northern Mariana Islands and other parts of the United States (or other parts of the world) can require several days, or more, because of the location of the Northern Mariana Islands. Electronic fund transfers, however, may be made by telephone. Since the Northern Mariana Islands is telephonically connected with the rest of the world by space satellite, funds may be transferred electronically between the Northern Mariana Islands and most world commercial centers almost instantaneously.

Subchapter VI, however, is primarily concerned with the rights of consumers in electronic fund transfers. 15 U.S.C. § 1693(b). Consumers in the Northern Mariana Islands should have the same rights with respect to electronic fund transfers as do consumers elsewhere in the United States.

Subchapter VI is applicable to Guam and all other territories and possessions of the United States. Id. § 1693a(10). Its legislative history does not indicate why the subchapter was not also applied to the Northern Mariana Islands. See 1978 U.S. Code Cong. & Ad. News 9273, 9403 et seq. A fair guess is that, when the subchapter was enacted, only ten months after the effective date of section 502 of the Covenant, the persons drafting the subchapter were not aware additional language was necessary to make it applicable in the Northern Mariana Islands. That additional language is here proposed.

Proposed legislative language.

The following language, if enacted by the United States Congress, would implement this recommendation:

> An Act to make the Electronic Fund Transfer Act applicable to the Northern Mariana Islands.
>
> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that section 903(10) of Public Law 90-321, 82 Stat. 146 (1968), as added by section 2001 of Public Law 95-630, 92 Stat. 3641 (1978) (15 U.S.C. § 1693a(10)), is amended by inserting "the Northern Mariana Islands," immediately after "the Commonwealth of Puerto Rico,".

* * *

Petroleum Marketing Practices Act.

Recommendation.

Legislation should be enacted to make applicable to the Northern Mariana Islands a federal statute protecting gasoline and diesel fuel distributors and service stations from arbitrary or discriminatory termination or nonrenewal of their franchises by their suppliers. The legislation should also make applicable to the Northern Mariana Islands provisions in the same statute requiring sellers of gasoline to disclose the octane rating of that gasoline.

The statutes.

The Petroleum Marketing Practices Act is found in chapter 55 of title 15 of the United States Code. Chapter 55 protects gasoline and diesel fuel distributors and service stations from arbitrary or discriminatory termination or nonrenewal of their franchises by their suppliers. The chapter is intended to counterbalance the economic advantages refiners and suppliers have over their distributors and dealers.

Chapter 55 also requires disclosure of standard gasoline octane ratings by refiners, distributors, and dealers. The purpose of the octane disclosure requirements is to allow an operator of a motor vehicle to avoid buying gasoline with a higher octane than is necessary for that vehicle. Not only does the operator save money, but petroleum is conserved on a national scale since more crude oil is required to produce higher octane gasoline. See generally Senate Report 95-731, at 877-79 (1978).

Present applicability.

The franchise protection provisions of chapter 55 are directed toward any "franchisor engaged in the sale, consignment, or distribution of motor fuel in commerce." 15 U.S.C. § 2802(a). The octane disclosure requirements are likewise directed at refiners and dealers who distribute gasoline in commerce. Id. § 2822(a), (b). See also id. § 2822(e). The octane disclosure requirements are also directed at "each gasoline retailer," without qualification. Id. § 2822(c).

"Commerce" is defined, for purposes of the franchise protection and octane disclosure provisions of chapter 55, to include "commerce between any State and any place outside of such State." Id. §§ 2801(18), 2821(13). Further, all "States" are prohibited from enacting laws imposing franchise protection or octane disclosure requirements different from those in chapter 55, strong evidence that

the chapter is to apply in all "States." Id. §§ 2806, 2824. "State" in turn is defined to include, among other jurisdictions, the several States and Guam. Id. §§ 2801(19), 2821(14). Chapter 55 was enacted, however, after the effective date of section 502 of the Covenant, so the chapter is not made applicable to the Northern Mariana Islands by operation of that section.

"State" also includes, for purposes of chapter 55, "any other commonwealth, territory, or possession of the United States." 15 U.S.C. §§ 2801(19), 2821(14). The Northern Mariana Islands is not now a commonwealth, territory, or possession of the United States. On termination of the trusteeship, however, the Northern Mariana Islands will become a commonwealth of the United States. Covenant §§ 101, 1003(c). At that time, chapter 55 will become applicable to the Northern Mariana Islands.*

Discussion.

All retailers of gasoline and diesel fuel in the Northern Mariana Islands rely upon a single supplier. For the foreseeable future, total motor fuel sales volume in the Northern Mariana Islands is unlikely to be sufficient to attract a second supplier. No complaints are known to have been made by gasoline retailers about the existing supplier. Nonetheless, gasoline retailers in the Northern Mariana Islands are particularly vulnerable to arbitrary or discriminatory franchise actions by the supplier because they have no alternate supplier to which to turn. The interests of those retailers should be protected now rather than only upon termination of the trusteeship.

Operators of motor vehicles in the Northern Mariana Islands should also be able to rely on octane ratings posted at the gasoline pump, so they can avoid buying a higher octane than is necessary for their vehicles. To the extent the choice of gasoline grades in the

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*The reference to "any other Commonwealth" in the definition of "State" could be deemed a reference to the Northern Mariana Islands, since it is the only foreseeable "commonwealth" other than Puerto Rico, already specifically mentioned in the definition. But see section 3371(h) of title 16, U.S.C.: "The term 'State' means any of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, Northern Mariana Islands, American Samoa, and any other territory, commonwealth, or possession of the United States." (Emphasis added.)

If the intent is to include the Northern Mariana Islands, a second question arises: Is the Northern Mariana Islands included before termination of the trusteeship, when it is not yet a commonwealth under section 101 of the Covenant?

Northern Mariana Islands is limited, posted octane ratings will also be useful to persons deciding which motor vehicle to purchase.

Legislation is here proposed to expand the definition of "State" to include the Northern Mariana Islands for purposes of chapter 55. If that legislation is enacted, the franchise protection provisions and the octane disclosure requirements of the chapter will become applicable to the Northern Mariana Islands immediately, rather than on termination of the trusteeship.

Proposed legislative language.

The following language, if enacted by the United States Congress, would implement this recommendation:

> An Act to make the Petroleum Marketing Practices Act applicable to the Northern Mariana Islands.
>
> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that subsection 19 of section 101 and subsection 14 of section 201 of Public Law 95-297, 92 Stat. 322 (1978) (15 U.S.C. §§ 2801(19), 2821(14)), are amended by inserting in each "the Northern Mariana Islands," immediately after "Guam,".

* * *

The Magnuson Fishery Conservation and Management Act.

Recommendation.

Legislation should be enacted (1) to define "State," for purposes of the Magnuson Fishery Conservation and Management Act, to exclude the Northern Mariana Islands, thereby making that Act clearly inapplicable to the Northern Mariana Islands; and (2) to exclude the Northern Mariana Islands as a constituent State of the Western Pacific Regional Fishery Management Council, but allow the Governor of the Northern Mariana Islands to designate a nonvoting observer to the Council.

The statute.

The Magnuson Fishery Conservation and Management Act (FCMA) was enacted in 1976 to protect, conserve, and enhance the fisheries resources of the United States. The FCMA, 16 U.S.C. §§ 1801 et seq., extends the exclusive fisheries zone of the United States from 12 to 200 miles and provides for the development of regional fishery management plans and regulations to govern fishing within that zone.

Under the FCMA, regional fishery management councils are responsible for preparing management plans for each fishery within their designated geographical areas. Id. § 1852(h)(1). Fishery management plans are aimed at preventing overfishing and depletion of the fishery. Id. § 1851. Foreign fishing vessels are issued permits only for that portion of the optimum yield, as defined in the plan, that will not be harvested by United States vessels. Id. § 1821(a)(3), (d)(2). Regional fishery management councils, among other functions, also review applications for foreign fishing permits in their areas of authority. Id. § 1852(h)(2).

The FCMA does not purport to regulate tuna fisheries within the 200-mile exclusive fisheries zone of the United States. Id. §§ 1802(14), 1813. The United States regards tuna as a highly migratory species subject to regulation only by international agreement.* See 16 U.S.C. §§ 1801(b)(1)(A), 1801(b)(2).

Present applicability.

Prior to January 12, 1983, the applicability of the FCMA to the Northern Mariana Islands was the subject of litigation and much controversy.** On that date United States Public Law 97-453 became law. 96 Stat. 2481. That law amends the FCMA to provide the Northern Mariana Islands voting membership on the Western Pacific Regional Fishery Management Council. Id. § 5, amending 16 U.S.C. § 1852(a)(8). The legislative history of Public Law 97-453 establishes that, whatever the applicability of the FCMA to the Northern Mariana Islands prior to passage of Public Law 97-453, the FCMA became clearly applicable to the Northern Mariana Islands on

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*Tuna fisheries are the subject of a separate Commission recommendation, below.

**The Executive Director of the Commission was previously associated with the law firm representing the plaintiffs in litigation asserting the inapplicability of the FCMA to the Northern Mariana Islands, although he was not attorney of record for plaintiffs.

January 12, 1983. House Report 97-549, at 17-18 (1982), reprinted in 1982 U.S. Code Cong. & Ad. News 4320, 4330-31.*

Discussion.

Why the Northern Mariana Islands should be treated differently. Special treatment of the Northern Mariana Islands with respect to the FCMA is justified on a number of grounds. First, fisheries resources account for a disproportionately large share of the total natural resource base available to the people of the Northern Mariana Islands. By comparison, in other parts of the United States, even where fisheries are an important industry, a variety of other natural resources contribute to the well-being of the local population. Accordingly, the people of the Northern Mariana Islands have a correspondingly greater interest in obtaining financial benefit from fishing operations in adjacent waters.

Second, throughout their history the peoples of the Northern Mariana Islands have claimed, defended, and harvested the marine resources of the ocean extending to distances in excess of 200 miles. See generally M. Nakayama & F. Ramp, Micronesian Navigation, Island Empires and Traditional Concepts of Ownership of the Sea (1974). If the FCMA is applied to the Northern Mariana Islands, the government of the Northern Mariana Islands loses all authority to regulate foreign fishing within the fishery conservation zone. 16 U.S.C. §§ 1812, 1856(a).

Third, the other areas of the Trust Territory are realizing substantial benefits from the sale of access rights to foreign

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*Even though the FCMA is thus applicable to the Northern Mariana Islands, the argument has been made that it cannot become effective there until termination of the trusteeship, when the Northern Mariana Islands will come under the sovereignty of the United States. See Covenant §§ 101, 1003(c). The fishery conservation zone to which the FCMA applies is defined as "a zone contiguous to the territorial sea of the United States." 16 U.S.C. § 1811. Until the United States assumes sovereignty over the Northern Mariana Islands, the argument goes, there will be no territorial sea of the United States adjacent to the Northern Mariana Islands and, consequently, there can be no fishery conservation zone adjacent to the Northern Mariana Islands.

fishermen.* The Northern Mariana Islands should not be penalized by comparison because it chose a closer association with the United States.**

The fisheries resource. The development of commercial fisheries in the waters surrounding the Northern Mariana Islands is widely considered as one of the most promising approaches to the economic advancement of the Northern Mariana Islands.*** At present, commercial fishery operations based in the Northern Mariana Islands are quite limited and the value of seafood imports to the Northern Mariana Islands exceeds the value of the local catch. Commonwealth of the Northern Mariana Islands, Fisheries Development Plan 4-5, 7 (1981). Nonetheless, the potential for future development is demonstrated by the high level of current activity by Japanese, Korean, and Taiwanese fishing vessels in the waters adjacent to the

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*Under the proposed Compact of Free Association between the United States, the Marshall Islands, and the Federated States of Micronesia, the latter two governments are expressly granted the capacity to conduct their own foreign affairs "relating to law of the sea and marine resources matters, including the harvesting, conservation, exploration or exploitation of living and non-living resources from the sea, seabed or subsoil to the full extent recognized under international law". § 121(b)(1), reprinted in 131 Cong. Rec. S2815, S2816 (daily ed. March 7, 1985).

**It has been argued that, in negotiating a closer political association with the United States, the Northern Mariana Islands gave up control of its ocean resources in exchange for greater participation in other federal programs and benefits than will be enjoyed by the other, more loosely-associated areas of the Trust Territory. At the time the Covenant was negotiated and, subsequently, approved by the United States Congress, however, Congress had yet to enact the FCMA, claiming for the United States a 200-mile exclusive fishery conservation zone. When the extent of the United States claim became clear, the Northern Mariana Islands asserted its own claim to primary control over marine resources within 200 miles of its territorial waters. See Northern Mariana Islands Public Law 2-7 (1980), 2 Code of the Northern Mariana Islands §§ 1101 et seq. (1984). See also Constitution of the Northern Mariana Islands, Art. XIV, § 1 (1978).

***See Robert R. Nathan Associates, Inc., Assessment of Current and Prospective Socio-economic Conditions in the Commonwealth of the Northern Mariana Islands 15, 18, 89 (1980).

Northern Mariana Islands and by the substantial Japanese fishery based in the Northern Mariana Islands before the Second World War. Id. at 4, 7. See also Ship Charts Prime Fish Areas, Pacific Daily News (Guam), May 17, 1982, at 2; Ship Finds Healthy Fishing Spots, id., April 27, 1982, at 3.

Rights of United States fishing vessels in waters adjacent to the Northern Mariana Islands. Making the FCMA inapplicable to the Northern Mariana Islands does not allow the Northern Mariana Islands to exclude United States fishing vessels. Any Northern Mariana Islands attempt to prevent United States vessels from fishing in waters adjacent to the Northern Mariana Islands would run afoul of the Privileges and Immunities Clause of the United States Constitution. In Mullaney v. Anderson, 342 U.S. 415 (1952), the Supreme Court held the Territory of Alaska's higher license fee for nonresident commercial fisherman--not justified by higher costs of enforcing the licensing statute against those nonresidents--unconstitutionally abridged the privileges and immunities of citizens of the States. See also Hicklin v. Orbeck, 437 U.S. 518, 526 (1978), citing Mullaney with approval. The Northern Mariana Islands, under section 501(a) of the Covenant, is obliged to respect those same privileges and immunities.

Regional fishery management council membership. The Northern Mariana Islands is now included in the Western Pacific Fishery Management Council with Hawaii, Guam, and American Samoa. 16 U.S.C. § 1852(a)(8). If the Northern Mariana Islands is not covered by the FCMA, it should also cease to be a voting member of the regional council. Accordingly, the proposed legislation returns the Western Pacific Council to the membership it had before the Northern Mariana Islands was made a member.* In order to keep the Northern Mariana Islands abreast of fisheries developments that may be of concern to the Northern Mariana Islands, the proposed legislation allows the Governor of the Northern Mariana Islands to designate a nonvoting observer on the Western Pacific Council.

Proposed legislative language.

The following language, if enacted by the United States Congress, would implement the Commission's recommendation:

An Act to amend provisions of the Magnuson Fishery

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*This would eliminate not only the Northern Mariana Islands representative but also an additional at-large representative added to keep an odd number of members on the council. See House Report 97-549, at 18 (1982), reprinted in 1982 U.S. Code Cong. & Ad. News 4320, 4331.

Conservation and Management Act with regard to the Northern Mariana Islands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that subsection 21 of section 3 of the Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C. § 1802(21)), is further amended to read as follows:

> The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and any other territory or possession of the United States, except the Northern Mariana Islands.

Sec. 2. Paragraph (8) of subsection (a) of section 302 of the Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C. § 1852(a)(8)), is further amended to read as follows:

> (8) Western Pacific Council.--The Western Pacific Management Council shall consist of the State of Hawaii, American Samoa, and Guam and shall have authority over the fisheries in the Pacific Ocean seaward of such States. The Western Pacific Council shall have 11 voting members, including 7 appointed by the Secretary pursuant to subsection (b)(2) of this section (at least one of whom shall be appointed from each of the following States: Hawaii, American Samoa, and Guam). The Western Pacific Council shall also have a nonvoting observer who shall be appointed by and serve at the pleasure of the Governor of the Northern Mariana Islands.

* * *

Tuna fisheries.

Recommendation.

Legislation should be enacted (1) to require the Secretary of State, upon the request of and in cooperation with the governor of the Northern Mariana Islands, to negotiate and conclude international fisheries agreements for the conservation and management of tuna in waters adjacent to the Northern Mariana Islands; and (2) to require

that the benefits accruing from any such agreements be paid to the government of the Northern Mariana Islands.

The statutes.

The United States takes the position that tuna (and only tuna) is a highly migratory species of fish, not subject to regulation by the nation in the waters of which the tuna are found, but only by international agreement.* See 16 U.S.C. §§ 1801(b)(1)(A), 1801(b)(2). Consistently with this position, the Magnuson Fishery Conservation and Management Act (FCMA) does not apply to tuna. 16 U.S.C. §§ 1802(14), 1813.**

Currently, no federal statute or international agreement governs the taking of tuna in waters adjacent to the Northern Mariana Islands.

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*To the contrary, the Convention on the Law of the Sea, adopted in April 1982 by the Third United Nations Conference on the Law of the Sea, allows coastal nations to regulate tuna within their exclusive economic zones (which are largely defined in the same manner as is the fishery conservation zone established by the Magnuson Fishery Conservation and Management Act). See article 57 of the Convention, reprinted in 21 International Legal Materials 1245 (1982). See also id. arts. 61-62; Burke, Highly Migratory Species in the New Law of the Sea, 14 Ocean Development and International Law 273 (1984); Burke, U.S. Fishery Management and the New Law of the Sea, 76 American Journal of International Law 24, 41-45 (1982). The Convention does, however, encourage regional cooperation in the conservation and management of highly migratory species, which are defined to include tuna. See article 56 and annex I of the Convention. President Reagan has announced that the United States will not sign the Convention as adopted, although the treatment of tuna resources was not given as a reason for rejecting the Convention. See 18 Weekly Compilation of Presidential Documents 887-88 (1982).

**Passage of the FCMA was opposed by American tuna fishermen, who feared unilateral action by the United States "would trigger further unilateral action on the part of certain foreign nations off whose shores they fish, preventing their continued fishing in such waters, and causing the demise of their [industry]." House Report 94-445, at 23 (1975). Tuna was exempted from regulation under the FCMA to allay this opposition. Id. at 43.

Discussion.

The tuna resource. Tuna is the most exploited fish in Micronesian waters. Participation in the tuna fishery is the objective of foreign fishing interests that pay other Trust Territory entities for rights to fish in their waters.*

Recent studies conducted pursuant to the Central, Western and South Pacific Fisheries Development Act, 16 U.S.C. §§ 758e et seq., have revealed a potentially significant albacore resource in the Western Pacific, with estimates of an annual yield between 16 and 20 million pounds and a value of up to $23.4 million. House Report 97-549, at 19-20 (1982), reprinted in 1982 U.S. Code Cong. & Ad. News 4320, 4332-33. This discovery has led the United States tuna fleet to make a major commitment in the area: ". . . over 12 percent of the entire United States tuna fleet, representing over 20 percent of its capacity, has redirected its efforts to these areas. This situation has provided the necessary relief to the United States tuna fleet from the political uncertainties in the traditional Eastern Pacific ocean fishery." Id. at 20. See also ITC Rejects Proposal to Increase Tariffs on Some Canned Tuna, Wall Street Journal, July 26, 1984, at 10; Orbach, Fishing in Troubled Waters: The U.S. Tuna Seine Fleet in the Pacific, 22 Environment 32 (1980).

Why the Northern Mariana Islands should be treated differently. Special treatment of the Northern Mariana Islands with respect to tuna fisheries is justified on a number of grounds. First, tuna resources account for a disproportionately large share of the total natural resource base available to the people of the Northern Mariana Islands. By comparison, in other parts of the United States, even where tuna is an important industry, a variety of other natural resources contribute to the well-being of the local population. Accordingly, the people of the Northern Mariana Islands have a correspondingly greater interest in otaining financial benefit from tuna fishing operations in adjacent waters.

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*The constituent parts of the Trust Territory of the Pacific Islands other than the Northern Mariana Islands are the Republic of the Marshall Islands, the Republic of Palau, and the Federated States of Micronesia. Each of these governments has been able to negotiate lucrative fisheries agreements with foreign fishing interests. For example, in April 1982 Japanese interests agreed to pay the Federated States of Micronesia approximately $2.35 million for one year's fishing rights in the waters of the Federated States and, in addition, to provide about $150,000 worth of fisheries-related goods and services. A similar agreement allowed Japanese fishing boats to fish in the waters of the Marshall Islands for one year in exchange for a cash payment of $1.25 million.

Second, throughout their history the peoples of the Northern Mariana Islands have claimed, defended, and harvested the marine resources of the ocean extending to distances in excess of 200 miles. See generally M. Nakayama & F. Ramp, Micronesian Navigation, Island Empires and Traditional Concepts of Ownership of the Sea (1974).

Third, the other areas of the Trust Territory are realizing substantial benefits from the sale to foreign fishermen of access rights to the tuna fishery. The Northern Mariana Islands should not be penalized by comparison because it chose a closer association with the United States.

Negotiation of international fisheries agreements. Under the trusteeship, the United States is generally responsible for representing the Trust Territory of the Pacific Islands, including the Northern Mariana Islands, in its relationships with other nations of the world. Trusteeship Agreement, Arts. 3, 8(4), 10, 11(2). On termination of the trusteeship, the United States assumes "complete responsibility for and authority with respect to matters relating to foreign affairs and defense affecting the Northern Mariana Islands." Covenant §§ 104, 1003(c). Accordingly, any fisheries agreements affecting waters adjacent to the Northern Mariana Islands must be negotiated by the United States.

The negotiation of international fisheries agreements affecting the fishery conservation zone of the United States is an important part of the FCMA. 16 U.S.C. §§ 1822, 1823. The Secretary of State, under the FCMA, is specifically authorized to negotiate international fisheries agreements affecting tuna. Id. § 1822(a)(4)(B).*

The legislation here proposed requires the Secretary of State, independently of the FCMA,** upon the request of and in cooperation with the governor of the Northern Mariana Islands, to negotiate and conclude one or more international fisheries agreements for the conservation and management of tuna in waters adjacent to the

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*See, for example, Comment, Territorial Waters--Agreement Providing for the Issuance of International Licenses for Fishing Tuna in the Eastern Pacific Ocean--An Attempt at Uniformity in an Area where Conflicting Jurisdictional Claims have Created Tensions and Conflicts, 14 Georgia Journal of International and Comparative Law 235 (1984).

**In its separate recommendation on the FCMA, the Commission proposes that the FCMA be made inapplicable to the Northern Mariana Islands.

Northern Mariana Islands.* To ensure that the interests of the Northern Mariana Islands are taken into account during the negotiation of such an agreement or agreements, the proposed legislation allows the governor of the Northern Mariana Islands to designate an observer to attend all negotiating sessions. The legislation also requires that the benefits accruing from any such agreements be paid to the government of the Northern Mariana Islands.**

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*Such negotiations might lead to regional fisheries agreements, such as that establishing the Inter-American Tropical Tuna Commission. See 1 U.S.T. 230, T.I.A.S. 2044 (1949).

The Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau--all constituent parts of the Trust Territory of the Pacific Islands--participated in negotiation of the Nauru Agreement Concerning Co-operation in the Management of Fisheries of Common Interest, initialled at Port Moresby, New Guinea, in 1981. The agreement was also initialled by Papua New Guinea and the Republic of Kiribati and, in addition, identifies the Solomon Islands and the Republic of Nauru as parties.

**Precedent for requiring such benefits to be paid to the government of the Northern Mariana Islands may be found in section 703(b) of the Covenant, which provides for payment to the government of the Northern Mariana Islands of certain federal taxes and fees derived from the Northern Mariana Islands. The Committee on Interior and Insular Affairs of the United States House of Representatives stated that this subsection

> provides that the federal government will pay to the Government of the Northern Marianas, to be expended for the benefit of the people of the Northern Marianas as the local government determines, the proceeds of essentially all taxes and duties and fees collected with respect to the Northern Marianas, other than those which relate to social security benefits.

House Report 94-364, at 12-13 (1975). See also Senate Report 94-433, at 85 (1975).

Proposed legislative language.

The following language, if enacted by the United States Congress, would implement this recommendation:

An Act to encourage international agreement on the conservation and management of tuna in waters adjacent to the Northern Mariana Islands; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the Congress finds and declares the following:

(a) In the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (approved by Public Law 94-241, 90 Stat. 263 (1976)), the United States agreed to assist in developing the economic resources of the Northern Mariana Islands for the benefit of the inhabitants of those islands.

(b) Tuna in waters adjacent to the Northern Mariana Islands are a valuable and renewable resource, which can contribute to the food supply, economy, and health of the Northern Mariana Islands and of the Nation as a whole.

(c) Foreign fishing vessels catch substantial quantities of tuna in waters adjacent to the Northern Mariana Islands, but neither the Northern Mariana Islands nor the United States derive revenues from tuna caught by those vessels.

(d) Negotiation of an international agreement or agreements to conserve and manage tuna in the Western Pacific Ocean, including those waters adjacent to the Northern Mariana Islands, is in the best interests of the United States and the Northern Mariana Islands.

Sec. 2. (a) The Secretary of State shall, upon the request of and in cooperation with the Governor of the Northern Mariana Islands, initiate and conduct negotiations for the purpose of entering into one or more international fisheries agreements for the conservation and management of any highly migratory species of fish within the fishery conservation zone of the Northern Mariana Islands or any

appropriate region that includes that fishery conservation zone. The Governor of the Northern Mariana Islands shall be entitled to designate an observer, who shall serve at the pleasure of the Governor, to attend those negotiations.

(b) All payments or other consideration received pursuant to any agreement concluded under the authority granted by subsection (a) of this section and attributable to the taking of fish, or to the right to take fish, by the vessels of foreign nations within the fishery conservation zone of the Northern Mariana Islands shall be paid to the Government of the Northern Mariana Islands.

(c) For purposes of this section, the fishery conservation zone of the Northern Mariana Islands shall be defined in relation to the Northern Mariana Islands in the same manner as the fishery conservation zone of the United States is defined in relation to the United States by the Magnuson Fishery Conservation and Management Act.

(d) For purposes of this section, the term "highly migratory species" means species of tuna which, in the course of their life cycle, spawn and migrate over great distances in waters of the ocean.

* * *

Importation of fruit bats.

Recommendation.

Legislation should be enacted to make inapplicable to the Northern Mariana Islands the prohibition in the federal criminal laws of importation of "flying foxes" or fruit bats of the genus Pteropus.

The statute.

Section 42(a) of title 18 of the United States Code makes criminal the importation into the United States of various wildlife species considered "injurious to human beings, to the interests of agriculture, horticulture, forestry, or to wildlife or the wildlife resources of the United States." Among the prohibited species are the "so-called flying foxes' or fruit bats of the genus Pteropus."

Present applicability.

Section 42(a) bars the importation of injurious wildlife into the United States or any of its territories or possessions. Guam is

a territory or possession of the United States. Accordingly, by operation of section 502(a)(2) of the Covenant, injurious wildlife--including fruit bats of the genus Pteropus--may not be imported into the Northern Mariana Islands.

Discussion.

Fruit bats of the genus Pteropus are a highly-prized gourmet delicacy in the Northern Mariana Islands. Although Pteropus is native to the Northern Mariana Islands, fruit bats are extremely scarce there. They are, however, plentiful in other parts of the Pacific. Importation of fruit bats into the Northern Mariana Islands presents little risk of injury to the environment or other wildlife, since few if any will escape the cooking pot. In the unlikely event proliferating fruit bats become a problem, the local legislature can enact appropriate legislation. Accordingly, the legislation proposed in this report makes the prohibition against importation of fruit bats inapplicable to the importation of fruit bats into the Northern Mariana Islands.

Proposed legislative language.

The following language, if enacted by the United States Congress, would implement this recommendation:

> An Act to amend section 42 of title 18 of the United States Code to permit the importation of certain fruit bats into the Northern Mariana Islands.
>
> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that subsection (a) of section 42 of title 18, United States Code, is amended by redesignating present paragraph (5) as paragraph (6) and by inserting a new paragraph (5), to read as follows:
>
> > Nothing in this subsection shall restrict the importation of the species of so-called "flying foxes" or fruit bats of the genus Pteropus into the Northern Mariana Islands.

* * *

Customs crimes.

Recommendation.

Because the Northern Mariana Islands is not part of the customs territory of the United States, legislation should be enacted to make inapplicable to the Northern Mariana Islands provisions in title

18 of the United States Code making criminal certain offenses against the customs laws of the United States.

The statutes.

Chapter 27 of title 18 of the United States Code makes criminal smuggling and other conduct intended to evade payment of customs duties or other restrictions on the importation of articles into the United States. Three other scattered sections of title 18 also make criminal certain offenses against the customs laws of the United States. They are section 496, making criminal the forgery or counterfeiting of documents related to the entry of imports or the collection of duties; section 1364, making criminal injury to or destruction of articles to be exported to foreign countries; and section 1915, making criminal the unauthorized compromise of a customs claim by an officer of the United States. Closely related to enforcement of the custom laws is the criminal prohibition of section 2279 of title 18, forbidding persons not in the service of the United States from boarding a vessel just prior to its arrival in port.

Present applicability.

Most federal criminal statutes protect specific federal interests and are of universal application throughout the territorial limits of the United States. The territorial limits of the United States are defined to include all places subject to the jurisdiction of the United States. 18 U.S.C. § 5. Guam is subject to the jurisdiction of the United States, and thus to federal criminal laws. See United States v. Santos, 623 F.2d 75, 77 (9th Cir. 1980); United States v. Taitano, 442 F.2d 467, 469 (9th Cir. 1971), certiorari denied, 404 U.S. 852 (1971). The federal criminal laws are therefore applicable to Guam and the several States and, by operation of section 502(a)(2) of the Covenant, are consequently now applicable to the Northern Mariana Islands.

Certain sections of chapter 27 of title 18, making criminal smuggling and other customs law violations, are inapplicable, by their own terms, to Guam and other named areas outside the customs territory of the United States. See 18 U.S.C. §§ 542 (entry of goods by means of false statements), 544 (relanding of goods), and 546 (smuggling). The Northern Mariana Islands is also outside the customs territory of the United States. Covenant § 603(a). But because the Northern Mariana Islands is not specifically named, these sections and the remainder of chapter 27 are applicable to the Northern Mariana Islands under the general proposition that federal criminal statutes are applicable in all areas subject to the

jurisdiction of the United States.* Under that same general proposition, the other provisions in title 18 making criminal certain offenses against federal customs laws are also applicable to the Northern Mariana Islands.

Discussion.

The Northern Mariana Islands is not within the customs territory of the United States. Covenant § 603(a). Because the Northern Mariana Islands administers its own customs territory, smuggling and other offenses against its customs laws should be defined and punished pursuant to the laws of the Northern Mariana Islands, not pursuant to federal law. Accordingly, legislation is here proposed to make chapter 27 (§§ 541-552) and sections 496, 1364, and 1915 of title 18 inapplicable to the entry of goods or articles into the Northern Mariana Islands or to the export of goods or articles therefrom. The proposed legislation also allows officers and employees of the government of the Northern Mariana Islands in the performance of their official duties to board vessels prior to arrival in ports of the Northern Mariana Islands, notwithstanding section 2279. Thus, the proposed legislation allows harbor pilots, customs officials, and law enforcement officers to board vessels as necessary prior to their arrival in ports of the Northern Mariana Islands.**

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*A statute is applicable to the Northern Mariana Islands if it is applicable to the several States and Guam. Covenant § 502(a)(2). The converse, however, is not true. A statute applicable to all areas subject to the jurisdiction of the United States is not inapplicable to the Northern Mariana Islands simply because it is inapplicable to Guam.

**Several provisions in other chapters of part I of title 18 call for seizure and forfeiture of contraband and other specified property in the same manner as property is seized and forfeited under federal customs laws. See §§ 1955(d) (property used in illegal gambling operations); 1963(c) (property used in and ownership interests in racketeer influenced and corrupt organizations); 2274 (vessels used for illegal purposes); 2513 (illegal wiretapping and eavesdropping devices). Even though the Northern Mariana Islands is outside the customs territory of the United States and federal customs laws generally do not apply to the Northern Mariana Islands, the seizure and forfeiture provisions of those laws are applicable to the Northern Mariana Islands to the extent they are incorporated by reference in the above-mentioned criminal statutes. See generally The Brazil, 134 F.2d 929 (7th Cir. 1943). The legislation here proposed does not alter that applicability. (The seizure and forfeiture provisions of the federal customs laws are found in part V of chapter 4 in title 19 of the United States Code. See especially 19 U.S.C. §§ 1604-1618.)

Proposed legislative language.

The following language, if enacted by the United States Congress, would implement the Commission's recommendation:

An Act to make inapplicable to the Northern Mariana Islands certain provisions in title 18 of the United States Code regarding offenses against the customs laws of the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that chapter 27 of title 18, United States Code, is amended by--

(a) adding to the table of contents thereof the following:

Sec. 553. Imports to and exports from the Northern Mariana Islands.

and

(b) adding thereto a new section, to read as follows:

§ 553. Imports to and exports from the Northern Mariana Islands.

This chapter and sections 496, 1364, and 1915 of this title shall not apply to the entry of goods or articles into the Northern Mariana Islands nor to the export of goods or articles therefrom.

Sec. 2. Section 2279 of title 18, United States Code, is amended by adding thereto a new paragraph, to read as follows:

Nothing in this section shall restrict officers or employees of the Government of the Northern Mariana Islands, in the performance of their official duties, from boarding any vessel about to arrive at any port of the Northern Mariana Islands.

* * *

Exportation of arms, liquors, and narcotics to Pacific Islands.

Recommendation.

An obsolete federal law prohibiting the export of arms, liquor, and narcotics to certain "uncivilized" Pacific islands should be repealed.

The statute.

Section 969 of title 18 of the United States Code, derived from a 1902 statute, imposes criminal penalties on anyone "subject to the authority of the United States" who gives or sells arms, liquor, or narcotics to "any aboriginal native of any of the Pacific Islands" in a specified area unless the island is "in the possession or under the protection of [a] civilized power." The object of the statute, which was strongly supported by missionary societies, was to avoid sales "for the purpose of so infuriating these tribes that they may kill the civilized portion of the people that are on those islands." 35 Cong. Rec. 1202 (1902).

Present applicability.

The area in which the gift or sale of arms, liquor, or narcotics is prohibited includes all of Micronesia (including the Northern Mariana Islands), Melanesia, and Polynesia (except Easter Island).

Discussion.

Persons in the Northern Mariana Islands are subject to the authority of the United States. Trusteeship Agreement, Art. 3; Covenant §§ 101, 1003(c). Presumably, the authors of this legislation would concur that the Northern Mariana Islands is now under the protection of a civilized power. The statute could conceivably be applied, however, to persons in the Northern Mariana Islands exporting, for example, liquor to other island nations. This law should be repealed as obsolete.

Proposed legislative language.

The following language, if enacted by the United States Congress, would implement this recommendation:

> An Act to repeal an obsolete provision in title 18 of the United States Code, prohibiting the exportation of arms, liquors, or narcotics to certain aboriginal natives of Pacific Islands.
>
> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that chapter 45 of title 18, United States Code, is amended by--

(a) striking from the table of contents thereof the following:

Sec. 969. Exportation of arms, liquors, and narcotics to Pacific Islands.

and

(b) by repealing section 969.

* * *

Lottery prohibitions.

Recommendation.

Lotteries are commonly used in the Northern Mariana Islands to raise funds for charitable purposes. Legislation should be enacted to modify the applicability to the Northern Mariana Islands of provisions in the federal criminal laws prohibiting lotteries. Similarly, provisions in the federal postal laws making certain lottery materials unmailable should be modified to exempt mail to an address within the Northern Mariana Islands for a lottery conducted in the Northern Mariana Islands by a nonprofit organization for religious, charitable, educational, or benevolent purposes.

The statutes.

Chapter 61 (sections 1301 to 1304) of title 18 of the United States Code makes criminal, among other things, the use of the mails and common carriers to further lottery enterprises. Chapter 30 (sections 3001 et seq.) of title 39 of the Code makes certain lottery materials nonmailable.

Present applicability.

The criminal penalties of title 18 are triggered whenever illegal lottery materials are brought into the United States, given to a common carrier for carriage, carried in interstate or foreign commerce, or mailed. 18 U.S.C. §§ 1301-1302. Federally-licensed radio stations are also prohibited from broadcasting lottery information or advertisements. Id. § 1304.

The territorial limits of the United States are defined, for purposes of all of title 18, to include every place subject to the jurisdiction of the United States. 18 U.S.C. § 5. Guam is subject to the jurisdiction of the United States, and thus to federal criminal laws. See United States v. Santos, 623 F.2d 75, 77 (9th

Cir. 1980); United States v. Taitano, 442 F.2d 467, 469 (9th Cir. 1971), certiorari denied, 404 U.S. 852 (1971). The United States, for purposes of the federal criminal laws, therefore includes Guam and the several States and, by operation of section 502(a)(2) of the Covenant, the Northern Mariana Islands.

Further, "interstate commerce" is defined, for purposes of title 18, to include "commerce between one State, Territory, Possession, or the District of Columbia and another State, Territory, Possession, or the District of Columbia." 18 U.S.C. § 10. Guam is a "Territory" or "Possession" of the United States so interstate commerce includes commerce among the several States and Guam. By operation of section 502(a)(2) of the Covenant, interstate commerce also includes commerce among the several States, Guam, and the Northern Mariana Islands. Thus, statutes--like the lottery prohibitions--making a particular activity criminal if it affects interstate or foreign commerce are applicable to activities affecting commerce crossing the borders of the Northern Mariana Islands.

Radio stations in the Northern Mariana Islands must be licensed by the Federal Communications Commission. 47 U.S.C. § 301; Covenant § 502(a)(2). Those stations are consequently also subject to the prohibition on broadcast of lottery information or advertisements.

The federal postal laws are also applicable to the Northern Mariana Islands. Section 403(a) of title 39 of the United States Code requires the Postal Service to "receive, transmit, and deliver" the mails "throughout the United States, its territories and possessions" and to "serve as nearly as practicable the entire population of the United States." Guam is a territory or possession of the United States. Accordingly, by operation of section 502(a)(2) of the Covenant, the Northern Mariana Islands is also among the jurisdictions served by the Postal Service. And, in fact, the Northern Mariana Islands has been served by the United States Postal Service through the many years it has been part of the Trust Territory of the Pacific Islands.*

Consequently, chapter 30 of title 39 of the Code, making certain lottery materials nonmailable, is applicable to the Northern Mariana Islands.

Discussion.

Bingo, raffles, lotteries, and other games of chance are popular and widespread in the Northern Mariana Islands. Funds are raised for a variety of charitable and other worthwhile purposes through these means. But, if a church official on Tinian orders raffle tickets to

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*See section 225.1(e) of title 39, C.F.R. (1983), including the Trust Territory within the Western Region of the Postal Service.

be printed on Saipan and has those tickets shipped from Saipan to Tinian on a commuter airline, the official would violate these federal statutes. If a local newspaper carrying an advertisement announcing a "Las Vegas night" with games of chance, sponsored by a local service club to raise money for charity, is deposited in the mail, the newspaper is also in violation of the law.

Legislation is here proposed to make the criminal prohibitions inapplicable to any lottery conducted in the Northern Mariana Islands by a nonprofit organization for religious, charitable, educational, or benevolent purposes.*

Proposed legislative language.

The following language, if enacted by the United States Congress, would implement this recommendation:

> An Act to exempt certain nonprofit organizations in the Northern Mariana Islands from prohibitions on the distribution of certain lottery materials.
>
> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that chapter 61 of title 18, United States Code, is amended by--
>
> (a) adding to the table of contents thereof the following:
>
> Sec. 1308. Certain lotteries in the Northern Mariana Islands.
>
> and

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*The government of the Northern Mariana Islands is authorized to conduct a public lottery. Northern Mariana Islands Public Law 3-60, 1 Code of the Northern Mariana Islands § 9301 (1984). Lotteries conducted by a State are exempted from most of the anti-lottery provisions of title 39. 39 U.S.C. 3005(d). They are also exempted from similar provisions in the federal criminal laws. 18 U.S.C. § 1307. "State" is defined, for purposes of these exemptions, to include the territories and possessions of the United States. 39 U.S.C. § 3005(d); 18 U.S.C. § 1307(c). Guam is a territory or possession of the United States. Accordingly, by operation of section 502(a)(2) of the Covenant, any lottery conducted by the government of the Northern Mariana Islands pursuant to Northern Mariana Islands Public Law 3-60 is entitled to these exemptions.

(b) adding a new section thereto, to read as follows:

§ 1308. Certain lotteries in the Northern Mariana Islands.

(a) Nothing in this chapter shall prohibit an advertisement, a list of prizes, or information concerning a qualified lottery conducted in the Northern Mariana Islands in accordance with the laws of the Northern Mariana Islands:

(1) disseminated in a newspaper published in the Northern Mariana Islands, or

(2) broadcast by a radio or television station licensed to a location in the Northern Mariana Islands.

(b) Nothing in this chapter shall prohibit the transportation or mailing to addresses within the Northern Mariana Islands of equipment, tickets, or materials concerning a qualified lottery conducted in the Northern Mariana Islands in accordance with the laws of the Northern Mariana Islands.

(c) For the purposes of this section "qualified lottery" means a lottery conducted by a nonprofit organization for religious, charitable, educational, or benevolent purposes, in which no part of the gross receipts derived therefrom inures to the benefit of any private shareholder, member, or employee of such organization except as compensation for actual expenses incurred by that person in the conduct of the lottery.

Sec. 2. Section 3005 of title 39, United States Code, is amended by adding a new section (f) thereto, to read as follows:

> (1) Nothing in subsection (a) of this section shall prohibit the mailing to addresses within the Northern Mariana Islands of equipment, tickets, or materials concerning a qualified lottery conducted in the Northern Mariana Islands.
>
> (2) For the purposes of this section, "qualified lottery" means a lottery conducted by a nonprofit organization for religious, charitable, educational, or benevolent purposes, in which no part of the gross receipts derived therefrom inures to the benefit of any private shareholder, member, or employee of such organization except as compensation for actual expenses incurred by that person in the conduct of the lottery.

* * *

Technical amendments to title 18 of the United States Code, Crimes and Criminal Procedure.

Recommendation.

A number of technical amendments should be made to provisions in title 18 of the United States Code, Crimes and Criminal Procedure, to confirm that the government and residents of the Northern Mariana Islands have the same rights and duties under those provisions as do other jurisdictions and persons subject to those laws.

Discussion.

The term "State" is not defined for purposes of title 18 and may be taken to mean only the States of the Union. Yet in context the right given or duty imposed on a State is equally appropriate to give to or impose on the Northern Mariana Islands.* Thus, section 245(c) of title 18 protects State law enforcement officers lawfully carrying

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*The rights and duties also are appropriate for other areas, such as Guam, subject to the jurisdiction of the United States, but the mandate of this Commission does not extend to recommending changes in the applicability of federal laws to areas other than the Northern Mariana Islands.

out their duties from prosecution for certain civil rights offenses. Section 402 allows certain offenses against State laws to be punished as criminal contempt if they also violate a federal court order. Section 659 makes clear that States, as well as the United States, may prosecute theft or embezzlement of interstate or foreign freight shipments and that conviction or acquittal on the merits under State law bars a subsequent federal prosecution for the same act or acts.

Section 1761(b) of title 18 exempts from the prohibition against transportation of prison-made goods in interstate or foreign commerce goods manufactured for use by a State government. Section 1901 makes criminal trading in the funds or debts or public property of a State by a federal officer engaged in collection or disbursement of federal revenues.

The legislation proposed herein defines "State" to include the Northern Mariana Islands for purposes of each of these sections.

The protection of persons and property and the preservation of the peace within a State or territory are, generally speaking, functions of the State or territorial government. Federal criminal laws enacted by Congress for these purposes operate only in the so-called "special maritime and territorial jurisdiction of the United States," where State or territorial governments lack jurisdiction. See Caha v. United States, 152 U.S. 211, 215 (1894).

Section 7 of title 18, defining the "special maritime and territorial jurisdiction of the United States," has been interpreted to include within that jurisdiction only areas within which the United States exercises exclusive jurisdiction, for example, a military installation, and areas outside of the United States where no recognized system of law and order obtains. Ex parte Mulvaney, 82 F. Supp. 743, 744 (D. Hawaii 1949). Thus, the then Territory of Hawaii was held not to be within the special maritime and territorial jurisdiction of the United States. Id. See also Watts v. United States, 1 Wash. T. 288, 296-301 (1870), holding the then Territory of Washington the equivalent of a State so that crimes committed there were not committed in an area within the sole and exclusive jurisdiction of the United States. By the same reasoning, the Northern Mariana Islands is not within the special maritime and territorial jurisdiction of the United States. But see also Wynne v. United States, 217 U.S. 234 (1910), holding, under a predecessor statute, that a murder committed on a ship in Honolulu harbor, within the jurisdiction of the Territory of Hawaii, was not within the jurisdiction of a "State" and, thus, could be prosecuted by the United States. None of the judicial decisions specifically addresses the situation of the Northern Mariana Islands or, even, of any unincorporated territory. Accordingly, legislation is here proposed to make clear that the Northern Mariana Island is to be treated, for

purposes of section 7 of title 18, as a State, not within the special maritime and territorial jurisdiction of the United States and that, consequently, crimes such as homicide, arson, rape, and robbery, if they involve no federal interest, are punishable under the laws of the Northern Mariana Islands, not under federal laws.

In two other sections of title 18, "State or Territory" is used without elaboration, so that whether Guam and, by way of section 502(a)(2) of the Covenant, the Northern Mariana Islands are included is uncertain. Again, the right given to or the duty imposed on the "State or Territory" is equally appropriately given to or imposed on the Northern Mariana Islands. Section 1715 allows firearms to be mailed to officers of a State or Territory "whose official duty is to serve warrants of arrest or commitments" or to "watchmen engaged in guarding the property" of a State or Territory. Section 1716 allows switchblade knives to be mailed to employees of the government of a State or Territory for use in government activities. The proposed legislation allows the Northern Mariana Islands to be treated as a State or Territory for purposes of sections 1715 and 1716.

Section 1114 of title 18 makes criminal the killing of a wide variety of enumerated officers and employees of the United States. Among those officers and employees are "any employee of the Department of Agriculture designated by the Secretary of Agriculture . . . to perform any function in connection with . . . any program of Puerto Rico, Guam, the Virgin Islands of the United States, or the District of Columbia, for the control or eradication or prevention of the introduction or dissemination of animal diseases . . . ." The proposed legislation adds the Northern Mariana Islands to the list of jurisdictions mentioned by name in this portion of section 1114.

Proposed legislative language.

The following language, if enacted by the United States Congress, would implement the Commission's recommendation:

> An Act to revise and clarify the applicability of certain federal criminal statutes to the Northern Mariana Islands.
>
> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the Northern Mariana Islands shall be considered a "State" for purposes of sections 7, 245(c), 402, 659, 1761(b), and 1901 of title 18, United States Code.
>
> Sec. 2. The Northern Mariana Islands shall be considered a "State" or "Territory" for purposes of sections 1715 and 1716 of title 18, United States Code.

Sec. 3. Section 1114 of title 18, United States Code, is amended by inserting after "Guam," the phrase "the Northern Mariana Islands,".

* * *

The Higher Education Act.

Recommendation.

Legislation should be enacted to establish a block grant for higher education programs in the Northern Mariana Islands. This block grant will replace the Northern Mariana Islands' share of funds appropriated each year by Congress under various financial assistance programs funded under the Higher Education Act.

The statute.

The goal of the Higher Education Act, as amended, codified at sections 1001 et seq. of title 20, United States Code, is to achieve equal educational opportunity through federal support of postsecondary education. See, for example, House Report 96-520, at 4-5 (1979). To fulfill that goal the Act provides financial assistance to State and local education agencies and institutions of higher education for a variety of purposes: to strengthen developing institutions; to provide assistance to disadvantaged students; to improve library resources; to provide training for faculty and staff; and to develop specific academic programs.* Financial assistance to these agencies and institutions is provided in some cases on the basis of a statutory formula, based on the number of students enrolled in institutions of higher education, and in other cases on the basis of grant applications that compete with other applications from throughout the United States. The former type of assistance is known as "formula" grants; the latter type is known as "discretionary" grants.

Present Applicability.

The Higher Education Act is expressly applicable to the Northern Mariana Islands. 20 U.S.C. § 1141(b). The applicability of the Act to the Northern Mariana Islands qualifies the Northern Mariana

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*The Act also provides assistance directly to students through basic (and supplemental) educational opportunity grants, and direct and guaranteed student loans. That assistance is not addressed here.

Islands for financial assistance through formula and discretionary grants programs on the same basis as the several States.

Discussion.

Legislation is proposed in this report that would require the Secretary of Education to allocate annually to the Northern Mariana Islands a block grant to represent the Northern Mariana Islands' share of funds available through various discretionary and formula grant programs under the Higher Education Act. This grant would be available to meet the postsecondary educational needs and priorities of the Northern Mariana Islands. Its expenditure would not be limited to purposes permitted under the Act; the block grant would be available for any legitimate use furthering postsecondary education within the Northern Mariana Islands.

Public Law 96-374, 94 Stat. 1495 (1980), authorized an analysis of the educational needs of insular areas and required the Secretary to report to Congress "with respect to the most appropriate form of federal postsecondary assistance . . . ." 20 U.S.C. § 1441(b). The study that resulted, Postsecondary Education in the U.S. Territories,* confirmed the perception of Congress that educational needs in the insular areas are unique.

With respect to the needs of the insular areas, including the Northern Mariana Islands, the study found that:

- The school age population is rising rapidly;
- The general educational level is much lower than in the fifty States;
- The economies, governments, and postsecondary institutions are in early stages of development;
- Postsecondary education costs are higher than in the States; and
- The financial resources of the insular areas are few.

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*The study, prepared under contract with the United States Department of Education by Urban Systems Research & Engineers, was completed in May 1982. This study has been highly praised by the Pacific Postsecondary Education Council, which consists of representatives of the postsecondary institutions in Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands. See Pacific Postsecondary Education Council, Recommendations for Postsecondary Education in the U.S. Territories 2-3 (1982).

Postsecondary Education in the U.S. Territories ii-iii.

With respect to federal assistance currently available to insular areas for postsecondary educational needs, the study found that:

- Federal grants do not fit the fundamental development needs of territorial colleges;
- Federal matching requirements sometimes discourage territorial participation;
- Federal regulations and procedures are sometimes inappropriate;
- Federal support activities--particularly training and technical assistance--are inadequate; and
- Territorial colleges are often at a competitive disadvantage for discretionary grants and, therefore, do not receive their "fair share" of federal aid.

Id. at viii.

Postsecondary educational needs in the Northern Mariana Islands are more basic than in other insular areas. Although the Northern Mariana Islands since 1976 has had a community college, the Northern Marianas College, that institution--unlike institutions in other insular areas--has no permanent facility, no college library, and, most importantly, no accreditation.* Without accreditation, it is almost impossible to receive federal assistance. Without federal assistance, the school is severely handicapped in fulfilling its primary mission of assisting the assimilation of the people of the Northern Mariana Islands into the American political family. Id. Appendix, at 79.

In sum, federal grant programs are not now designed to meet the varied range of postsecondary educational needs of the Northern Mariana Islands, in spite of various legislative initiatives. The Northern Marianas College, for instance, cannot qualify for any Higher Education Act grants because it lacks accreditation. 20 U.S.C. § 1141(a). Without funds for its development, the institution's chances for accreditation remain slim.

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*The Northern Marianas College, by contract with accredited institutions, does offer accredited courses to students in the Northern Mariana Islands.

Several laws enacted by Congress in the last few years have recognized the special needs and characteristics of insular areas, including the Northern Mariana Islands. Public Law 95-134, 91 Stat. 1159, as amended, permits (but does not require) federal agencies to consolidate federal grant programs for the insular areas. 48 U.S.C. § 1469a. The authority was intended to reduce and simplify for local governments the administrative and financial burdens associated with federal assistance programs.

More recently, section 1201 of the Education Amendments of 1980, Public Law 96-374, 94 Stat. 1495, expressly recognizing the specific educational needs of the insular areas, provides discretionary authority for the Secretary of Education to modify assistance programs available to the insular areas under the Higher Education Act. 20 U.S.C. § 1144a(a).

The Secretary, however, has not undertaken to consolidate higher education programs, either under the general authority of Public Law 95-134 or under the more specific authority of the Education Amendments of 1980. See generally U.S. General Accounting Office, Limited Progress Made in Consolidating Grants to Insular Areas (Report GGD-81-61; 1981).

The Department of Education has permitted consolidation of programs available to insular areas under laws other than the Higher Education Act. 34 C.F.R. §§ 76.125-76.135 (1981). Only formula grant programs, however, have been included among the programs that may be consolidated; discretionary grant programs have not been included. Id. § 76.125. Discretionary grants by definition are awarded on a competitive basis. Consequently, until the competition has taken place, the portion of the total discretionary grants to be received by a particular jurisdiction is unknown. Since the portion of the total is unknown, it cannot be consolidated with other programs. To consolidate a discretionary grant program with another program, it is therefore necessary prior to the competition to reserve for the recipient jurisdiction a portion of the funds available. Concurrently, that jurisdiction becomes ineligible to compete for the remaining funds available under the program. For that particular jurisdiction, the discretionary grant program is converted to a set-aside fund, easily consolidated with other programs.

Most programs funded under the Higher Education Act are discretionary grant programs. Consolidation of only the formula grant programs under the Act would not affect the majority of funds available under the Act.

Furthermore, even if programs under the Act were consolidated, the Public Law 95-134 authority restricts the use of consolidated funds to the purposes of any one or more of the programs so

consolidated. 48 U.S.C. § 1469a(c). That is, consolidation of Higher Education Act funds under existing law would restrict the Northern Mariana Islands to one or more of those specific Higher Education Act purposes. Many postsecondary educational needs of the Northern Mariana Islands can be satisfied by spending funds for one or more of the specified purposes. Others, however, cannot be met in this way. See Pacific Postsecondary Educational Council, Recommendations for Postsecondary Education in the U.S. Territories 32-33 (1982). Programs under the Act are designed primarily for the several States. Conditions in the Northern Mariana Islands are quite different, and different responses to those conditions are appropriate. For example, in the several States, postsecondary enrollment is declining and some postsecondary physical facilities are no longer needed. By contrast, the Northern Mariana Islands has a young, growing population and virtually no physical facilities for postsecondary education. Consolidation alone does not allow the Northern Mariana Islands to design wholly new programs to better respond to the unique postsecondary educational needs of the islands.* Id.

Accordingly, the legislation proposed in this report requires the Secretary of Education to make a block grant annually to the Northern Mariana Islands to replace the various formula and discretionary grant programs funded under the Higher Education Act. This grant would give the Northern Mariana Islands clear responsibility for its own postsecondary programs, would simplify administration, and, most importantly, would allow the Northern Mariana Islands to design and implement programs to fit its own particular needs.

The legislation proposed in this report waives expressly any matching requirements otherwise authorized by law. By requiring a jurisdiction to match Federal funds with its own funds, the Federal Government attempts to obtain a larger program than the Federal funds alone can support. Matching requirements have been criticized as ineffective. See U.S. General Accounting Office, Proposed Changes in Federal Matching and Maintenance of Effort Requirements for State and Local Governments (Report GGD-81-7; 1980). A principal criticism is that "[a] strong matching requirement may screen out those governments most in need of a programs but least able to finance a match." Id. at iii. The insular areas and, particularly, the Northern Mariana Islands, are among those jurisdictions least able to

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*Public Law 96-374 also provides the Secretary with authority to modify Higher Education Act programs "to adapt such programs to the needs . . . of the Northern Mariana Islands." The authority to modify, however, probably cannot be read as authority to create wholly new programs.

finance a match. See Pacific Postsecondary Education Council, Recommendations for Postsecondary Education in the U.S. Territories 21-22 (1982). Congress recognized this when it enacted section 601 of Public Law 96-205, 94 Stat. 90, 48 U.S.C. § 1469a note, to waive for the Northern Mariana Islands and American Samoa matching requirements otherwise applicable to federal grant programs. Small insular areas had not been participating in programs requiring a local matching share because local governments could not devote a portion of their limited revenues to meeting the matching requirement. Matching requirements were therefore eliminated for programs requiring a local matching share of less than $100,000. (The figure was increased from $100,000 to $200,000 in 1983. Public Law 98-213, § 6, 97 Stat. 1459.) The legislation here proposed goes further, with respect to the Higher Education Act, by eliminating matching fund requirements without regard to the amount of matching funds required. The logic in favor of elimination of the requirement is at least as strong when a large match, rather than a small match, is required.*

The legislation proposed in this report does not condition Higher Education Act assistance to the Northern Mariana Islands on the continued existence of the Northern Marianas College. The early history of the college is promising, but it is too soon to tell if the college will establish itself as a permanent institution. Accordingly, the proposed legislation allows the Board of Education of the Northern Mariana Islands to designate the institution to administer Higher Education Act funds in the Northern Mariana Islands. While the Board may designate the Northern Marianas College as that institution, the procedure permits another institution to be chosen without the necessity of involving Congress, should the Board believe the community college for any reason is unable to administer the funds.

The proposed legislation also waives accreditation requirements for the Northern Marianas College (or any other recipient institution designated by the Board of Education of the Northern Mariana Islands). The application of national accreditation standards, which may be inappropriate to the Northern Mariana Islands in the first place, could operate to foreclose the very assistance needed by the Northern Mariana Islands to conform a fledgling postsecondary educational institution to those standards. The legislation here proposed also makes the Northern Marianas College (or any other

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*Elimination of matching requirements also eliminates administrative problems in consolidating grant programs containing matching requirements with other grant programs lacking such requirements.

institution designated by the Board) the recipient of the grant and provides that block-grant funds remain available until expended.*

The block grant authorized by the proposed legislation would consist of two components. One component would be equal to the entitlement of the Northern Mariana Islands under all formula grants otherwise available under the Higher Education Act. The proposed legislation then would add to the funds available from formula programs .33% of any funds appropriated by the Congress for discretionary grant programs under the Act.** The proposed legislation also would guarantee the Northern Mariana Islands any minimum share of discretionary grant funds guaranteed to all jurisdictions if that minimum share were greater than .33 percent.

The expenditure of the block grant by the recipient institution would be subject to federal audit under existing legislation. See 48 U.S.C. § 1469b. Further, the proposed legislation expressly reserves the right of the Secretary of Education to provide adequate procedures for accounting for, auditing, evaluating, and reviewing any programs or activities funded by the block grant. The proposed

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*Providing that block-grant funds remain available until expenditure is consistent with similar treatment afforded the Northern Mariana Islands and other areas under the other grant-consolidation statutes. See Public Law 96-205, § 602(b), 94 Stat. 84 (1980); Public Law 95-348, §§ 3(b)(2), 8, 92 Stat. 487 (1978).

**This percentage is derived from and is the same as the percentage of funds received by the Northern Mariana Islands from the total funds granted nationally in fiscal year 1982 under the Education Consolidation and Improvement Act of 1981, Public Law 97-135. Of $455,616,000 granted nationally, the Northern Mariana Islands received $1,505,000 or .33%. (The national figure may be found on page 3 of the October 25, 1982, issue of Education Daily; the data for the Northern Mariana Islands was provided by the Office of the Representative to the United States for the Northern Mariana Islands in a telephone conversation on November 3, 1982). Based on fiscal year 1981 appropriation figures contained in the 1982 Catalog of Federal Domestic Assistance, .33% would have provided the Northern Mariana Islands with approximately $1.1 million in Higher Education Act funds for the discretionary component of the block grant, had the legislation here proposed then been in effect. Taking into consideration proposed funding reductions and the 1983 budget estimates contained in the 1982 Catalog, this percentage would have provided the Northern Mariana Islands approximately $638,000 in fiscal year 1983.

legislation also makes clear that the Secretary may provide to the Northern Mariana Islands technical assistance that is otherwise available under the Act.

Not all programs authorized under the Act would be included in the block grant. Excluded would be those that provide financial assistance directly to students, such as the student loan programs and basic educational opportunity grants. These programs would continue to be administered as they have been in the past.

Proposed legislative language.

The following language, if enacted by the United States Congress, would implement the Commission's recommendation:

> An Act to create a block grant for financial assistance of postsecondary educational needs in the Northern Mariana Islands.
>
> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the Secretary of Education shall make available annually to the Northern Mariana Islands a block grant for postsecondary educational needs in the Northern Mariana Islands. The block grant shall be made from appropriations authorized under the Higher Education Act and shall consist of:
>
> > (a) An amount equal to the amounts of any funds that would otherwise be allotted to the Northern Mariana Islands or any institution of higher education in the Northern Mariana Islands on the basis of a formula prescribed by the Act, including, but not limited to funds allotted under:
> >
> > > (1) section 112 of the Act, as added by section 101(a) of Public Law 96-374, 94 Stat. 1367 (20 U.S.C. § 1012) (education outreach programs);
> > >
> > > (2) section 415A of the Act, as added by section 131(b)(1) of Public Law 92-318, 86 Stat. 235, and as amended (20 U.S.C. § 1070c) (State student incentives); and
> > >
> > > (3) sections 419 and 420 of the Act, as added by section 1001(a) of Public Law 92-318, 86 Stat. 235, as

amended (20 U.S.C. §§ 1070e and 1070e-1) (assistance to institutions of higher education).

(b) Thirty-three hundredths of one percent of any funds appropriated by Congress under the following authorizations:

(1) Section 119 of the Act, as added by section 101(a) of Public Law 96-374, 94 Stat. 1367 (20 U.S.C. § 1019) (education outreach programs), to the extent of the ten per centum of such funds apportioned for discretionary grants or contracts pursuant to section 116 of the Act, as added by section 101(a) of Public Law 96-374 (20 U.S.C. § 1016);

(2) Sections 201 and 347 of the Act, as added by sections 201 and 301 of Public Law 96-374, 94 Stat. 1367 (20 U.S.C. §§ 1021 and 1069c) (college and research library assistance and library training research, strengthening institutions, and aid to institutions with special needs);

(3) Section 417A of the Act, as added by section 131(b)(1) of Public Law 92-318, 86 Stat. 235, and as amended (20 U.S.C. § 1070d) (special programs for students from disadvantaged backgrounds);

(4) Section 531 of the Act, as added by section 153 of Public Law 94-482, 90 Stat. 2081, and as amended (20 U.S.C. § 1119) (teacher training programs);

(5) Sections 546, 607, and 613 of the Act, as added by sections 505(a) and 601(a) of Public Law 96-374, 94 Stat. 1367 (20 U.S.C. §§ 1119b-5, 1127, and 1130b) (training for elementary and secondary school teachers to teach handicapped children, and international education programs);

(6) Section 702 of the Act, as added by section 701 of Public Law 96-374, 94 Stat. 1367 (20 U.S.C. § 1132a-1), but only to the extent it authorizes appropriation of grant funds (grants for the construction, reconstruction, and renovation of undergraduate and graduate academic facilities);

(7) Section 801 of the Act, as added by section 129(b) of Public Law 94-482, 90 Stat. 2081, and as amended (20 U.S.C. § 1133) (cooperative education);

(8) Section 901 of the Act, as added by section 181(a) of Public Law 92-318, 86 Stat. 235, and as amended (20 U.S.C. § 1134) (grants to institutions of higher education); and

(9) Sections 942, 953, 1005, and 1102 of the Act, as added by sections 904, 905, 1001(a), and 1101 of Public Law 96-374, 94 Stat. 1367 (20 U.S.C. §§ 1134m, 1134p, 1135a-3, and 1136a) (assistance for training in the legal profession, law school clinical experience programs, fund for the improvement of postsecondary education, and urban grant university program).

If all jurisdictions entitled to receive funds appropriated pursuant to the authorizations listed in subsection (b) of this section are entitled to receive a minimum amount of funds pursuant to any such authorization and that minimum amount is greater than thirty-three hundredths of one percent of that authorization, then that minimum amount shall be substituted for thirty-three hundredths of one percent for each such authorization in determining the total amount of the block grant.

Sec. 2. The block grant authorized under section 1 of this Act shall be made available directly to a college or community college established or to be established by the Government of the Northern Mariana Islands and designated by the Board of Education of the Northern Mariana Islands as

the recipient of the block grant for purposes of meeting postsecondary educational needs in the Northern Mariana Islands. The block grant shall not be restricted in use to only those uses permitted under the Higher Education Act. Nothing in this section shall preclude the Secretary of Education from providing adequate procedures for accounting for, auditing, evaluating, and reviewing any programs or activities receiving benefits from the block grant authorized under section 1 of this Act or from providing technical assistance otherwise available under the Higher Education Act.

Sec. 3. The institution designated as recipient of the block grant pursuant to section 2 of this Act shall receive the block grant without regard to whether it is accredited. No funding otherwise available under the Act shall be denied the institution because it lacks accreditation. The Secretary of Education shall waive any requirement for matching funds otherwise required by the Act to be provided by the Northern Mariana Islands or by any institution of higher education in the Northern Mariana Islands.

Sec. 4. Nothing in this Act shall preclude the Northern Mariana Islands, or any institution of higher education in the Northern Mariana Islands, from receiving assistance under the Higher Education Act if that assistance is available under a program or programs not included in determining the amount of the block grant available to the Northern Mariana Islands pursuant to section 1 of this Act.

Sec. 5. The Higher Education Act or "the Act," as used herein, means the Higher Education Act of 1965, 79 Stat. 1219, as amended (20 U.S.C. §§ 1001 et seq.).

Sec. 6. Any funds required to be made available under this Act shall remain available until expended.

* * *

Northern Mariana Islands financial institutions as federal depositaries.

Recommendation.

The Secretary of the Treasury currently has authority to designate financial institutions in territories and possessions of the United States as depositaries to receive deposits of federal funds. Legislation should be enacted to give the Secretary similar

authority to designate financial institutions in the Northern Mariana Islands as federal depositaries.

The statute.

Section 3303(b) of title 31 of the United States Code allows the Secretary of the Treasury to designate financial institutions in territories and possessions of the United States to receive deposits of federal funds.

Present applicability.

Although Guam is a territory or possession, section 3303(b) does not apply to the several States. Consequently, the Covenant does not extend the Secretary's authority to include designation of financial institutions in the Northern Mariana Islands as depositaries of federal funds.

Discussion.

The Secretary of the Treasury, in order to carry out the business of the United States, should be authorized to designate depositaries in the Northern Mariana Islands to receive deposits of federal funds, just as the Secretary is authorized to designate such depositaries in the territories and possessions of the United States. Legislation is proposed below to amend section 3303(b) of title 31 to allow the Secretary to designate such depositaries in the Northern Mariana Islands.

Proposed legislative language.

The following language, if enacted by the United States Congress, would implement this recommendation:

> An Act to allow the Secretary of the Treasury to designate financial institutions in the Northern Mariana Islands as depositaries for federal funds.
>
> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that subsection (b) of section 3303 of title 31, United States Code, is amended by deleting the phrase "and in territories and possessions of the United States" and inserting in lieu thereof ", in territories and possessions of the United States, and in the Northern Mariana Islands."

* * *

Issuance of substitute federal checks.

Recommendation.

Legislation should be enacted to allow the issuance of substitute checks to replace checks drawn on federal funds on deposit in the Northern Mariana Islands when the original check is lost, stolen, or destroyed. Existing law allows issuance of substitute checks to replace checks drawn on federal funds on deposit in Guam or in other territories and possessions. The proposed treatment would establish identical procedures for the Northern Mariana Islands, Guam, and the other territories and possessions.

The statute.

Section 3331(c) of title 31 of the United States Code authorizes the issuance of substitute checks to replace lost, stolen, or destroyed checks when the original check was drawn on federal funds on deposit in a territory or possession or in a foreign country.

Present applicability.

The Northern Mariana Islands is now neither a territory or possession nor a foreign country. Although section 3331(c) is applicable when the original check is drawn on a depositary on Guam, it is not applicable to the several States. Consequently, the Covenant does not make section 3331(c) applicable to the replacement of checks drawn on federal funds on deposit in the Northern Mariana Islands.

Discussion.

The Northern Mariana Islands should be treated as are the territories and possessions of the United States, including Guam, and foreign countries for purposes of issuance of substitute federal checks. Legislation is proposed below to provide that treatment to the Northern Mariana Islands.

Proposed legislative language.

The following language, if enacted by the United States Congress, would implement this recommendation:

> An Act to allow issuance of substitute checks to replace checks drawn on federal funds on deposit in the Northern Mariana Islands when the original check is lost, stolen, or destroyed.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that subsection (c) of section 3331 of title 31, United States Code, is amended by inserting the phrase "or the Northern Mariana Islands" immediately after the phrase "a territory or possession of the United States".

* * *

Federal employee allotments to Northern Mariana Islands credit unions.

Recommendation.

Federal employees may allot portions of their pay to accounts in banks and savings and loans in the United States, the territories or possessions, or the Northern Mariana Islands. They may also make allotments to accounts in credit unions chartered under federal or State law. They may not, however, make an allotment to an account in a credit union chartered under the laws of the Northern Mariana Islands. Legislation should be enacted to correct this discrepancy and allow credit unions chartered under the laws of the Northern Mariana Islands to be treated as are credit unions chartered under the laws of other American jurisdictions.

The statute.

Section 3332 of title 31 of the United States Code authorizes federal employees to have part of their pay sent to certain financial organizations. An organization eligible to receive such an allotment may be "a bank, savings and loan association or similar institution, or a credit union chartered by the United States Government or a State." 31 U.S.C. § 3332(a). Regulations implementing section 3332 apply the requirement of a federal or State charter only to credit unions and not to the other financial institutions mentioned. 31 C.F.R. § 209.2(b) (1983).

Present applicability.

Since "State," for purposes of section 3332, is not defined to include territories or possessions, the Covenant does not operate to permit a federal employee under that section to designate a credit union chartered under the laws of the Northern Mariana Islands to receive a pay allotment.

Discussion.

Credit unions chartered under the laws of the Northern Mariana Islands ought to be eligible to receive pay allotments from federal

employees, just as are credit unions chartered by the Federal Government or a State.* Legislation is proposed below to grant that eligibility to credit unions chartered under the laws of the Northern Mariana Islands.

Proposed legislative language.

The following language, if enacted by the United States Congress, would implement this recommendation:

> An Act to allow credit unions chartered under the laws of the Northern Mariana Islands to receive pay allotments from federal employees.
>
> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that subsection (a) of section 3332 of title 31, United States Code, is amended by adding thereto the following sentence:
>
> "State", for purposes of this subsection, includes the Northern Mariana Islands.

* * *

Public participation in block grant proposals.

Recommendation.

The Northern Mariana Islands is eligible to receive various block grants pursuant to the Omnibus Budget Reconciliation Act of 1981. Current law applicable to each jurisdiction eligible for these grants other than the Northern Mariana Islands requires the jurisdiction to take certain steps to encourage local public participation in formulation of proposals for use of the grants and to ensure that the funds are spent as intended. Legislation should be enacted to make these requirements applicable to the Northern Mariana Islands as well.

The statutes.

Chapter 73 (sections 7301 et seq.) of title 31 of the United States Code requires States to prepare an annual report on uses

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*Credit unions chartered under the laws of Guam and other territories and possessions should be similarly eligible. This Commission, however, is only charged with recommending changes in federal laws as they apply to the Northern Mariana Islands.

proposed for block grant funds received from the Federal Government, to conduct a public hearing on that report, and to audit the expenditure of block grant funds received. "Block grants" are defined to include any amounts directly allocated to a State for discretionary use by the State pursuant to the Omnibus Budget Reconciliation Act of 1981, Public Law 97-35, 95 Stat. 357. These block grants include grants funded by various health care block grant programs, 42 U.S.C. §§ 300w et seq., 701 et seq.; by the community services block grant program, id. §§ 9901 et seq.; and the education block grant program, 20 U.S.C. §§ 3801 et seq.

Present applicability.

"State" is defined, for purposes of chapter 73, to include the territories and possessions of the United States. Since chapter 73 was enacted after January 9, 1978, the Northern Mariana Islands is not included in this definition of "State" by operation of section 502(a) of the Covenant. Accordingly, the requirements of chapter 73 do not apply to block grants to the Northern Mariana Islands.

Discussion.

At least some of the block grants to which chapter 73 applies are available to recipients in the Northern Mariana Islands. See, for example, 20 U.S.C. § 3875(a)(1); 42 U.S.C. § 9902(4). The requirements of chapter 73 apply to all jurisdictions eligible to receive the block grants subject to the chapter, except the Northern Mariana Islands. No good reason favors exempting the Northern Mariana Islands from these requirements. The current exemption was almost certainly inadvertent. Accordingly, legislation is proposed below to treat the Northern Mariana Islands in the same manner as all other jurisdictions for purposes of chapter 73.

Proposed legislative language.

The following language, if enacted by the United States Congress, would implement this recommendation:

> An Act to apply to the Northern Mariana Islands certain requirements for public participation in the formulation of block grant proposals.
>
> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that subsection (2) of section 7302 of title 31, United States Code, is amended by deleting the phrase "and territories and possessions of the United States." and inserting in lieu thereof the phrase ", territories and possessions of the United States, and the Northern Mariana Islands.".

* * *

The Rivers and Harbors Act.

Recommendation.

Legislation should be enacted to confirm the applicability of the Rivers and Harbors Act of 1899 to the Northern Mariana Islands.

The statute.

The Rivers and Harbors Act of 1899, 33 U.S.C. §§ 401 et seq., gives to the Secretary of the Army, acting through the Army Corps of Engineers (Corps), jurisdiction over dredge, fill, and similar activities affecting navigable waters of the United States, including coastal waters, rivers, and other waterways usable for commercial navigation. Permits must be secured from the Corps in order to dredge, excavate, fill, or build in navigable waters if the proposed construction would interfere with navigation.*

Permit applications are normally processed through the Corps' District Engineer concurrently with the processing of other required Federal, State, and local permits. The District Engineer takes into account State and local land and water policies and, absent overriding national interests, generally will issue a permit on receipt of a favorable State determination. 33 C.F.R. § 320.4 (1984).

The Corps is also responsible for the issuance of grants to States for such projects as aquatic plant control, beach erosion control, and flood control and bridge and coastal protection works.**

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*Under the Clean Water Act, 33 U.S.C. §§ 1251 et seq., permits must also be approved by the Corps--applying EPA standards--for any dredge or fill activity in any waters of the United States. Acts that the Corps of Engineers considers in its permit process but not discussed here are the National Environmental Policy Act, 42 U.S.C. §§ 4321 et seq.; the Endangered Species Act, 16 U.S.C. §§ 1531 et seq.; the Fish and Wildlife Coordination Act, 16 U.S.C. §§ 661 et seq.; the Preservation of Historical and Archeological Data Act of 1974, 16 U.S.C. §§ 469 et seq.; the National Historic Preservation Act, 16 U.S.C. §§ 470 et seq.; the Marine Mammal Protection Act, 16 U.S.C. §§ 1361 et seq.; and the Wild and Scenic Rivers Act, 16 U.S.C. §§ 1278 et seq. See 33 C.F.R. parts 320-329 (1984).

**Flood control projects are funded through the various Flood Control Acts. 33 U.S.C. §§ 701 et seq. Planning assistance is also available through the Water Resources Development Act, 42 U.S.C. §§ 1962d et seq.

(The Corps also grants monies under other River and Harbor Acts for small navigation projects and for the protection, clearing, and straightening of channels.)

Present applicability.

The Rivers and Harbors Act of 1899 applies to any "navigable water of the United States." 33 U.S.C. § 401.

The Rivers and Harbors Act can be held applicable to navigable waters of the Northern Mariana Islands for two reasons. First, there is a presumption that Congress has exercised its extensive reach under its interstate and foreign commerce powers under the Constitution, a reach that would embrace the Northern Mariana Islands. See Kaiser Aetna v. United States, 444 U.S. 164 (1979). Second, the Corps of Engineers routinely issues permits under the Rivers and Harbors Act in the Northern Mariana Islands. See, for example, U.S. Army Corps of Engineers, Letter of Permission No. PODCO-01592-S (December 8, 1980). Administrative interpretations are accorded deference in construing statutes. See, for example, Sawczyk v. United States Coast Guard, 499 F. Supp. 1034 (D.N.Y. 1980). See also Sutherland, Statutes and Statutory Construction § 49.06 (C. Sands ed. 1973).

The present applicability of the Act to the Northern Mariana Islands is not, however, entirely clear. The navigation laws have been expressly extended to Puerto Rico and the Virgin Islands. 48 U.S.C. §§ 749, 1399, 1405c. The specific application of the navigation laws to those territorial areas suggests nonapplicability of the laws to territorial areas to which they have not been specifically applied. The Commission on the Application of Federal Laws to Guam concluded those laws were applicable to Guam but, because of the express provision for the Virgin Islands, recommended Congress enact similar explicit legislation for Guam. Report of the Commission on the Application of Federal Laws to Guam, House Document 212, 82d Cong., 1st Sess. (1951), at 6-7. (Congress did not act on that recommendation.)

Discussion.

The economy of the Northern Mariana Islands is highly dependent on waterborne transportation. Since the islands are small and limited in resources, many goods, including essential foodstuffs, arrive by ship. The embryonic fisheries industry, of course, depends on fishing vessels. Tourists ply the water in glass-bottom sightseeing boats and charter sport fishing vessels. Many local citizens use watercraft of one sort or another for fishing or recreation. Given the importance of waterborne transportation in the Northern Mariana Islands, harbors and navigational channels obviously should be protected against destruction or encroachment.

One may grant that care is necessary to prevent detrimental effects on navigation, but still argue that this care may be required by local legislation of the Northern Mariana Islands rather than by applying federal laws to the Northern Mariana Islands. The inhabitants of the Northern Mariana Islands may have a better understanding of the environmental relationships in the islands than do scientists or federal officials far away. Further, the process of applying for permits under federal environmental and navigational laws has been criticized, both in the Northern Mariana Islands and elsewhere, as unduly burdensome and time-consuming. Delays are magnified for the Northern Mariana Islands by the distance of the islands from decision-making officials.

Despite these considerations, the Commission recommends the continued application of the Rivers and Harbors Act to the Northern Mariana Islands. While islanders may have a good understanding of traditional environmental relationships in their islands, the application to island areas of development technology perfected on continental land masses calls for different types of knowledge. Intensive, sophisticated research may be necessary to determine whether plans for a proposed development are reasonably consistent with protection of harbors and navigation channels. While the local government in the Northern Mariana Islands may be able to obtain such research from time to time on a contractual basis, it cannot duplicate on an ongoing basis the routine in-house expertise of the Army Corps of Engineers.

The Commission does not suggest means for expediting the review of permit applications from the Northern Mariana Islands. Streamlining the permit process may well be necessary, but the protection of federal laws requiring permits should not be eliminated by making those laws inapplicable to the Northern Mariana Islands. Rather, officials administering those laws should be encouraged toward greater efficiency. For example, in a praiseworthy development, the Army Corps of Engineers has recently issued a general permit authorizing the maintenance clearing of rivers, streams, storm drains, and beach areas in the Northern Mariana Islands without the necessity of obtaining specific permits for each activity. U.S. Army Corps of Engineers, General Permit PODCO-O GP 82-1 (1982).

As noted above, the Commission on the Application of Federal Laws to Guam concluded that the Rivers and Harbors Act is applicable to Guam. Because of the provision expressly applying the Act to the Virgin Islands, however, that Commission recommended Congress enact a similar provision for Guam. On the same rationale, legislation is

here recommended confirming the Act's applicability to the Northern Mariana Islands.*

Proposed legislative language.

The following language, if enacted by the United States Congress, would confirm the applicability of the Rivers and Harbors Act of 1899 to navigable waters in and adjacent to the Northern Mariana Islands.

> An Act to confirm the applicability of the Rivers and Harbors Act of 1899 to the Northern Mariana Islands.
>
> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the applicability of the Act of March 3, 1899, c.425, 30 Stat. 1151, as amended (33 U.S.C. §§ 401 et seq.), to the Northern Mariana Islands is confirmed.

* * *

Judicial venue under the Clean Water Act, the Ocean Dumping Act, and the Ocean Thermal Energy Conversion Act.

Recommendation.

Legislation should be enacted to make the District Court for the Northern Mariana Islands the proper forum for lawsuits arising in the Northern Mariana Islands (or in which the defendants are in the Northern Mariana Islands) under the Clean Water Act, the Ocean Dumping Act, and the Ocean Thermal Energy Conversion Act.

The statutes and their present applicability.

Provisions in the Clean Water Act, the Ocean Dumping Act, and the Ocean Thermal Energy Conversion Act make the District Court of Guam or the United States District Court for the District of Hawaii the proper forum for lawsuits under those Acts arising in the Trust Territory of the Pacific Islands (or in which the defendants are in

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*Unlike the recommendation of the Guam Commission, however, this recommendation does not address other laws for the protection and improvement of navigable waters.

the Trust Territory of the Pacific Islands).* 33 U.S.C. §§ 1321(n), 1322(m) (Clean Water Act); 1402(g) (Ocean Dumping Act); 42 U.S.C. § 9153(c) (Ocean Thermal Energy Conversion Act). Since the Northern Mariana Islands is part of the Trust Territory, lawsuits under those acts arising in the Northern Mariana Islands (or in which the defendants are in the Northern Mariana Islands) must be filed in the District Court of Guam or the United States District Court for the District of Hawaii.**

Discussion.

The Northern Mariana Islands now has its own federal court, the District Court for the Northern Mariana Islands. 48 U.S.C. §§ 1694-1694e. That court has all the jurisdiction of a District Court of the United States. Id. § 1694a(a). The District Court for the Northern Mariana Islands should be made the proper forum for lawsuits arising in the Northern Mariana Islands (or in which the defendants are in the Northern Mariana Islands) under the Clean Water Act, the Ocean Dumping Act, and the Ocean Thermal Energy Conversion Act.

Proposed legislative language.

The following language, if enacted by the United States Congress, would implement this recommendation:

> An Act to designate the District Court for the Northern Mariana Islands as the appropriate venue for certain actions under the Clean Water Act, the Ocean Dumping Act, and the Ocean Thermal Energy Conversion Act.

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*The substantive provisions of the Clean Water Act and their present applicability to the Northern Mariana Islands are discussed under chapter 26 of title 33 of the United States Code, in the Title-by-title survey section of this report. The Ocean Dumping Act is similarly discussed under chapter 27 of title 33 in the Title-by-title survey, while the Ocean Thermal Energy Conversion Act is treated under chapter 99 of title 42 in the survey.

**Such actions under the Clean Water Act may be filed in either the District Court of Guam or the United States District Court for the District of Hawaii. 33 U.S.C. §§ 1321(n), 1322(m). Such actions under the Ocean Dumping Act must be filed in the United States District Court for the District of Hawaii. Id. § 1402(g). Such actions under the Ocean Thermal Energy Conversion Act must be filed in the District Court of Guam. 42 U.S.C. § 9153(c). See also id. § 9102(15).

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that

Sec. 1. Judicial venue under the Clean Water Act. (a) Subsection (n) of section 311 of the Act of June 30, 1948, c.758, 62 Stat. 1155, as added by section 2 of Public Law 92-500, 86 Stat. 816, and as amended (33 U.S.C. § 1321(n)), is further amended:

(1) by striking "Trust Territory of the Pacific Islands" wherever it appears and inserting in lieu thereof "Trust Territory of the Pacific Islands (other than the Northern Mariana Islands)"; and

(2) by inserting a new sentence after the second sentence thereof, to read as follows:

In the case of the Northern Mariana Islands, such actions may be brought in the District Court for the Northern Mariana Islands.

(b) Subsection (m) of section 312 of the Act of June 30, 1948, c.758, 62 Stat. 1155, as added by section 2 of Public Law 92-500, 86 Stat. 816, and as amended (33 U.S.C. § 1322(m)), is further amended:

(1) by striking "Trust Territory of the Pacific Islands" wherever it appears and inserting in lieu thereof "Trust Territory of the Pacific Islands (other than the Northern Mariana Islands)"; and

(2) by inserting a new sentence after the first sentence thereof, to read as follows:

In the case of the Northern Mariana Islands, such actions may be brought in the District Court for the Northern Mariana Islands.

Sec. 2. Judicial venue under the Ocean Dumping Act. Subsection (g) of section 3 of 1972, Public Law 92-532, 86 Stat. 1052, as amended (33 U.S.C. § 1402(g)), is further amended:

(1) by inserting after "Puerto Rico," the following: "The District Court for the Northern Mariana Islands,"; and

(2) by inserting after "Trust Territory of the Pacific Islands" the following: "(other than the Northern Mariana Islands)".

Sec. 3. Judicial venue under the Ocean Thermal Energy Conversion Act. Subsection (c) of section 303 of Public Law 96-320, 94 Stat. 974 (42 U.S.C. § 9153(c)), is amended by deleting the period after "District of Hawaii" and inserting in lieu thereof ", and in the case of the Northern Mariana Islands, the appropriate court is the District Court for the Northern Mariana Islands.".

* * *

Medicaid.

Recommendation.

Legislation should be enacted to authorize the Secretary of Health and Human Services to waive or modify particular requirements of the Medicaid program otherwise applicable to the Northern Mariana Islands.

The statute.

Subchapter XIX of chapter 7 of title 42, United States Code (§§ 1396 et seq.), contains title 19 of the Social Security Act, creating the Medicaid program. The program

> authorizes Federal grants to States for medical assistance to low-income persons who are age 65 or over, blind, disabled, or members of families with dependent children. The program is jointly financed by the Federal and State governments and administered by States. Within broad Federal rules, each State decides eligible groups, types and range of services, payment levels for services, and administrative and operating procedures. Payments for services are made directly by the State to the individuals or entities that furnish the services.

42 C.F.R. § 430.0(a) (1984).

States participating in the Medicaid program must submit a medical assistance plan to the United States Department of Health and Human Services for approval and, thereafter, in providing assistance must comply with that plan. 42 U.S.C. §§ 1396, 1396c. Eligible

individuals needing financial assistance apply to the State or local agencies designated in the State plan. Medical services, in most instances, may then be obtained from any institution, doctor, or other person qualified to perform the services. Id. § 1396a(a)(23).

Present applicability.

The definition of "State" for purposes of this subchapter was amended in 1981 to include the Northern Mariana Islands, thereby making the Medicaid program available to the Northern Mariana Islands. Public Law 97-35, § 2162(a)(1), 95 Stat. 358, 42 U.S.C. § 1301(a)(1). See also 42 C.F.R. part 435 (1984).*

Although generally treated as States for purposes of the Medicaid program, the Northern Mariana Islands and other insular areas of the United States are subject to two rules not applicable to the States. First, total federal payments under the Medicaid program in any fiscal year may not exceed an amount specified by statute. 42

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*Even before the 1981 amendment, the Medicaid program was legally available to the Northern Mariana Islands. Section 502(a)(1) of the Covenant makes applicable to the Northern Mariana Islands as of January 9, 1978, "those laws which provide federal services and financial assistance programs . . . as they apply to Guam." Medicaid assistance has been available on Guam since the inception of the program in 1965. Public Law 89-97, § 121(c)(1), 79 Stat. 286, 352 (1965).

Section 1396a(b)(4) of title 42 requires States receiving Medicaid grants to impose no citizenship requirement on eligibility for assistance that would exclude United States citizens. In its January 1982 interim report to the United States Congress, the Commission recommended enactment of legislation to treat citizens of the Northern Mariana Islands as citizens of the United States for purposes of this requirement. Section 18 of Public Law 98-213, which was signed into law in December 1983, provides that United States citizenship requirements in federal laws applicable to the Northern Mariana Islands do not bar citizens of the Northern Mariana Islands from receiving federal services or financial assistance under those laws. Financial assistance under Medicaid is thus now available to citizens of the Northern Mariana Islands wherever they may be in the United States.

U.S.C. § 1308(c). For the Northern Mariana Islands the "cap" on annual federal payments is $550,000. Id.*

Second, for the Northern Mariana Islands (and Puerto Rico, the Virgin Islands, Guam, and American Samoa), the Federal Government pays fifty per cent of the costs of services provided under an approved Medicaid plan. Id. § 1396d(b). For all other eligible jurisdictions, the federal contribution ranges from fifty percent to eighty-three percent of the costs. The poorer States receive a greater percentage of total costs from the Federal Government while the more affluent States receive a lesser percentage.**

The Northern Mariana Islands has an approved Medicaid plan and is providing financial assistance to qualified individuals. Medicaid assistance in the Northern Mariana Islands is administered by the Northern Mariana Islands Department of Public Health and Environmental Services. Northern Mariana Islands Public Law 1-8, § 3(d) (1978), 1 Code of the Northern Mariana Islands § 2603(d) (1984).

Discussion.

Health care in the Northern Mariana Islands. In general, the health of the people of the Northern Mariana Islands is quite good. An infant mortality rate sixty percent higher than that in the United States, however, is the principal contributor to a crude death rate

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*Annual Medicaid expenditures in the Northern Mariana Islands apparently have not yet been sufficiently large to bring the "cap" into operation. This situation may change when a new hospital is completed, making qualified persons eligible for the first time to receive Medicaid assistance for inpatient medical services in the Northern Mariana Islands. See the discussion, Health care in the Northern Mariana Islands, below. Indeed, the "cap" may be reached before the new hospital is opened. See the discussion, "The 'cap'", below.

The upper limits for the other insular areas are: Puerto Rico--$63,400,000; Virgin Islands--$2,100,000; Guam--$2,000,000; and American Samoa--$1,150,000. 42 U.S.C. § 1308(c). The limits are roughly related to the population of each area.

**Congress may provide that persons in the territories receive less assistance from federally-funded programs than similarly situated persons in the States without violating constitutional guarantees of equal protection. Harris v. Rosario, 446 U.S. 651 (1980).

twenty percent greater than in the United States. See Robert Mytinger Associates, Inc., New Directions for Health Services for the Commonwealth of the Northern Mariana Islands 3 (1980) (Mytinger Study).

The principal hospital in the Northern Mariana Islands, Dr. Torres Hospital on Saipan, has been characterized as "woefully inadequate." 125 Cong. Rec. 10090, 10092 (1979) (remarks of Representative Phillip Burton). The hospital cannot meet the standards for Medicaid payments for inpatient medical services. See U.S. Department of Health, Education & Welfare, Statement of Deficiencies and Plan of Correction: Dr. Torres Hospital, Saipan, Northern Marianas (February 9, 1979). In 1980, the United States Congress authorized construction of a new hospital on Saipan. Public Law 96-205, § 202, 94 Stat. 84. Monies have been appropriated pursuant to that authorization, and construction of the new hospital is now under way.

Health care is in large part provided by personnel employed by the government of the Northern Mariana Islands. A private dental clinic operated by the Seventh-Day Adventists, a private optometrist, and a number of traditional healers (suruhana) also provide health care. The principal government health care facilities are the 84-bed Dr. Torres Hospital and four small dispensaries on Saipan, a 12-bed sub-hospital on Rota, and a four-bed sub-hospital/dispensary on Tinian. Mytinger Study 35, 38, 40.

> The geographic location of the [Northern Mariana Islands] contributes to extraordinarily high costs of training, employing and retaining health personnel. Its isolation contributes to inordinate costs of importing medical technology and building materials. The small population base and low volume of use of highly specialized medical services makes it impossible to provide the desired mix of high technology medical services on site. This, in turn, generates increasing costs for care and transport of patients to medical facilities abroad (in Guam, Hawaii and the U.S. mainland).

Id. at 11.

Throughout administration of the Trust Territory of the Pacific Islands by the United States, medical care has been provided the people of the Northern Mariana Islands by the government at fees that reflect only a small portion of the actual costs of that care. The government of the Northern Mariana Islands inherited this system of health care financing. Although efforts are under way to bring fees for medical services more into line with the costs of those services, these efforts are hampered by the inability of many persons in the less-developed economy of the Northern Mariana Islands to pay a larger share of the costs.

Referrals. Current regulations include among the expenses covered by Medicaid transportation and other related travel expenses determined to be necessary to secure medical examinations and treatment. 42 C.F.R. § 440.170(a)(1)(1984). Included are the cost of transportation "by ambulance, taxicab, common carrier, or other appropriate means, . . . [t]he costs of meals and lodging en route to and from medical care, and while receiving medical care; and . . . [t]he cost of an attendant to accompany the [patient], if necessary, and the cost of the attendant's transportation, meals, lodging, and, if the attendant is not a member of the recipient's family, salary." Id. § 440.170(a)(3). Thus, Medicaid assistance is now available for eligible patients from the Northern Mariana Islands who must be referred to health care facilities in Guam, Hawaii, or other jurisdictions for diagnosis or treatment that cannot be provided within the Northern Mariana Islands.

The need for off-island medical referral will not be substantially reduced by completion of the new hospital on Saipan. That hospital, while meeting Medicaid standards for inpatient medical care, will not significantly raise the level of professional care available in the Northern Mariana Islands. Patients who now require more sophisticated examination or treatment in Guam or Hawaii will continue to be examined or treated in Guam or Hawaii. For the foreseeable future, referral of patients will continue to impose a heavy financial burden on the Northern Mariana Islands not incurred in most United States jurisdictions.*

The proposed waiver authority. Three characteristics distinguish the Northern Mariana Islands from most jurisdictions where Medicaid is available: (1) the small population of the islands; (2) the dual role of the government as administrator of the Medicaid program and as principal provider of medical services; and (3) the subsidy of health care by the government from its general revenues.

--small population. The Northern Mariana Islands has a small population compared to that of the States and other jurisdictions eligible to participate in the Medicaid program. As a consequence, the number of persons with the talent and education to ensure that the Northern Mariana Islands meets all requirements for participation in the Medicaid program is limited. Even more than in other areas, these persons should not be diverted from more productive enterprise to compliance paperwork unless absolutely necessary to achieve the purposes of the Medicaid program in the Northern Mariana Islands.

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*See generally U.S. General Accounting Office, Ways to Reduce the Cost of Medical Referral Programs in Micronesia and American Samoa (Report GAO/NSIAD-84-139; 1984).

—dual role of government. The government of the Northern Mariana Islands, as principal provider of health services, is the principal recipient of Medicaid payments. At the same time, as administrator of the Medicaid program, it pays for these services. In effect, the government pays itself. There consequently may be opportunities to eliminate Medicaid requirements governing relationships between State Medicaid agencies and providers of medical services that deal with each other at arm's length.

—government subsidy. Hospitals are normally paid by Medicaid no more than their customary charge for inpatient services provided. 42 U.S.C. § 1396b(i)(3).* When, as in the Northern Mariana Islands, public institutions provide inpatient hospital services free of charge or at nominal charge, those institutions may be paid no more than the amount Department of Health and Human Services regulations determine will provide fair compensation to the institution for the services rendered. Id. Those regulations allow the institution to receive payment "at the same rate that would be used if the provider's charges were equal to or greater than its costs." 42 C.F.R. § 447.271 (1984). Additional upper limits on Medicaid payments are based on principles of reimbursement established under the Medicare program. Id. §§ 405.401 et seq., 447.253(b)(2).

American Samoa also has a small population, a government that is the principal provider of health services and administrator of the Medicaid program, and a government-subsidized health care system. Additionally, the medical care system of American Samoa is of about the same sophistication as that of the Northern Mariana Islands. Mytinger Study 146. The Medicaid program was extended to American Samoa in 1982. Public Law 97-248 § 136(a), 96 Stat. 324, 42 U.S.C. § 1301(a)(1). In extending the program to American Samoa, Congress authorized the Secretary of Health and Human Services to waive or modify any requirement of the Medicaid program except the requirements that (1) American Samoa provide matching funds, (2) annual federal expenditures be subject to the statutory "cap" of $750,000 (subsequently raised to $1,150,000), and (3) expenditures be for health services covered by the program. 42 U.S.C. § 1396a(j). Note that the Secretary is not required to grant all requests for waivers or modifications of Medicaid requirements applicable to American Samoa. The only reason given for American Samoa's special treatment in the legislative history of Public Law 97-248 is "the unique circumstances in the health system in American Samoa." House Conference Report 97-760, at 441 (1982). Those unique circumstances no doubt include its small population, the dual role of the government as principal provider of health services and as

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*Medicaid payments to hospitals must also be reasonable. 42 U.S.C. § 1396a(a)(13)(A). See also 42 C.F.R. § 447.250 (1984).

administrator of the Medicaid program, and government subsidy of health care. The same circumstances justify granting the Secretary of Health and Human Services authority similarly to waive or modify requirements of the Medicaid program as it applies to the Northern Mariana Islands. Legislation is here proposed to accomplish that end.

A bill, the Health Care Financing Amendments of 1983, pending before the 98th Congress, would have extended the treatment accorded American Samoa to Puerto Rico, the Virgin Islands, Guam, and the Northern Mariana Islands. S. 643 and H.R. 2576, 98th Cong., 1st Sess. § 227 (1983).* This bill was supported by the Health Care Financing Administration, the agency within the United States Department of Health and Human Services that administers the Medicaid program. The first section in the legislative language proposed in this recommendation is drawn from that bill.**

Freedom-of-choice requirements. In general, State plans for Medicaid assistance must allow individuals eligible for that assistance to choose any hospital, doctor, or other institution or person qualified to provide the medical services needed. 42 U.S.C. § 1396a(a)(23). (Some exception and waivers from this requirement are permitted. See id. § 1396n.)

In 1975, Congress provided that the plans for Puerto Rico, the Virgin Islands, and Guam need not permit individuals eligible for Medicaid assistance freedom to select their own medical providers. Public Law 94-48, § 2, 89 Stat. 247, 42 U.S.C. § 1396a(a)(23). Congress noted that each of these jurisdictions "had in place before Medicaid a well-developed public health care system, used by most of the population" and concluded that exemption "from the freedom-of-choice requirement would allow them to determine how to utilize their own limited dollars in meeting the health needs of the large eligible population." House Report 94-327, at 3 (1975). See also 121 Cong. Rec. 20930-31 (1975).

The Northern Mariana Islands similarly has a public health care system used by most of the population. At present, few alternatives

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*H.R. 2576 is identical to S.643.

**This Commission is charged only with recommending changes in federal laws as those laws affect the Northern Mariana Islands. Accordingly, the legislative language proposed herein does not address the operation of the Medicaid program in Puerto Rico, the Virgin Islands, and Guam.

to that system are available so, even if the Medicaid recipient has a legal right to choose any provider of health care, the public health care system will in most cases be the provider.

Medicaid is a law providing federal financial assistance. Accordingly, by operation of section 502(a)(1) of the Covenant, Medicaid applies to the Northern Mariana Islands as it does to Guam. Consequently, the Northern Mariana Islands--like Guam--needs not permit individuals eligible for Medicaid assistance freedom to select their own medical providers.

Because the Northern Mariana Islands is exempted from the freedom-of-choice requirement, physicians and other providers of health care may be discouraged from establishing practices in the Northern Mariana Islands, since they may not be eligible to receive Medicaid payments for services provided. The establishment of private-sector health care in competition with the government system could stimulate improvements in the quality of health care offered by the government system. On the other hand, if other sources of medical assistance do become established in the Northern Mariana Islands, and the freedom-of-choice requirement were in effect, many persons would be likely to resort to those other sources.

The diversion of patients from public to private health care would affect the financing of health care in the Northern Mariana Islands. The Northern Mariana Islands's fifty percent share of Medicaid costs (and 100 percent share of those costs after the "cap" is reached) would be paid by the Northern Mariana Islands to the private sector rather than to the government's own health care system for those patients. Whether the Northern Mariana Islands ends up paying less for total health care because freedom-of-choice is not permitted depends upon a number of factors. Among these factors are:

(1) Whether economies of scale in the government health care system are significantly diminished by the diversion of patients to the private sector;

(2) Whether Medicaid reimbursements for patients in the governmental health care system cover all reasonable costs of care (or, conversely, whether part of the costs of care for Medicaid recipients is paid by government subsidy not reimbursed by Medicaid, in which case the Federal Government would not be contributing 50 percent of the costs of that part);

(3) Whether private health care can be provided at less cost to the patient than unsubsidized governmental health care.

No recommendation is made here to apply the freedom-of-choice requirement to the Northern Mariana Islands.

Standard-of-care requirements. Dr. Torres Hospital, the principal hospital in the Northern Mariana Islands, cannot meet the standards for Medicaid payments for inpatient hospital services. Inpatient hospital services may only be furnished by hospitals meeting requirements for participation in Medicare. 42 C.F.R. § 440.10(a)(3)(iii) (1984). Those requirements are set forth in section 1395x(e) of title 42, U.S.C., and in sections 405.1011 et seq. of title 42, C.F.R. (1984).

> [The] conditions for participation are included to provide assurance that participating institutions are safe, that they have facilities and organization necessary for the provision of adequate care, and that they exercise their responsibility to discourage improper and unnecessary utilization of their services and facilities . . . . To allow payments to institutions for services of lower quality than are now generally acceptable might reduce the incentive for establishing high-quality institutions or for maintaining high standards where they now exist.

Senate Report 404, 89th Cong., 1st Sess. (1965), reprinted in 1965 U.S. Code Cong. & Ad. News 1943, 1969.

Thus, even though persons in the Northern Mariana Islands may be eligible for inpatient Medicaid assistance, they cannot receive that assistance in the Northern Mariana Islands because no hospital is qualified to provide inpatient care under the Medicaid program. The persons needing inpatient services obtain those services at Dr. Torres Hospital, but receive no Medicaid assistance in paying for those services.

At present, denial of Medicaid assistance for inpatient hospital care to eligible persons in the Northern Mariana Islands does not cause great hardship to those persons. The government pays most costs of hospital care from its own general revenues, so fees charged to individuals are low. Mytinger Study 4. While individuals do not suffer unduly because Medicaid assistance is not available for inpatient care at Dr. Torres, the financial burden on the government of the Northern Mariana Islands of subsidizing health care would be alleviated if Medicaid assistance were available for that inpatient care.

The new hospital under construction is expected to meet Medicaid standards for inpatient care. Consequently, when that hospital is opened, eligible persons will be able to receive Medicaid assistance for inpatient care in the Northern Mariana Islands.

The legislation proposed in this recommendation would allow the Secretary of Health and Human Services to exempt the Northern Mariana Islands from standard-of-care requirements. Because these

requirements protect human health and safety, wholesale exemption from all standard-of-care requirements would be unlikely. The authority granted would, however, allow selective exemption from particular requirements if the Secretary were convinced an exemption was justified.

The "cap" and percentage limitations. The legislation proposed herein does not allow the Secretary of Health and Human Services to alter the "cap" on federal Medicaid assistance to the Northern Mariana Islands or the requirement that the Northern Mariana Islands provide matching funds. If the Northern Mariana Islands were a State of the Union, there would be no statutorily-imposed upper limit to federal Medicaid assistance. As a State, too, the Northern Mariana Islands would certainly be among the poorest States, entitled to receive a federal contribution of 83 percent of total Medicaid costs. Likewise, were Puerto Rico, Guam, the Virgin Islands, and American Samoa States of the Union, they too would receive substantially larger sums in federal Medicaid assistance.

—off-island transportation and travel for referred patients. As noted earlier, payments to the Northern Mariana Islands under the Medicaid program are now authorized for transportation and other related travel expenses determined to be necessary to secure medical examinations and treatment. The limited medical care that can be made available in the Northern Mariana Islands (due to its small population) and the distance to locations where more sophisticated care is available make transportation and other travel expenses a disproportionately large element in the medical budget of the Northern Mariana Islands. Once the ceiling has been reached, whether a Medicaid-eligible patient can be referred off-island for necessary medical care depends upon whether the Northern Mariana Islands has sufficient local resources to pay all (rather than fifty percent of) transportation and other travel-related expenses. The Northern Mariana Islands is a relatively poor jurisdiction, and inability to pay these costs is likely, on some occasions at least, to result in delay or denial of needed medical services to some Medicaid-eligible patients. Federal participation in transportation and related travel costs for Medicaid patients in the fifty States is, of course, subject to no ceiling.

The Commission considered recommending to Congress enactment of legislation providing that the ceiling on Medicaid payments to the Northern Mariana Islands not apply to transportation and other travel expenses for off-island medical care. Because of the increase in the

ceiling made by Public Law 98-369, however, the Commission decided that such legislation is not now necessary.*

—"enhanced-match" programs. Within Medicaid are a number of programs for which the Federal Government contributes a substantially larger share of total costs, in order to encourage jurisdictions to participate in those programs. These "enhanced-match" programs, and the percentage the Federal Government pays for each, are:

(1) compensation and training of skilled medical personnel and support staff--75 percent (42 U.S.C. § 1396b(a)(2));

(2) design, development, or installation of mechanized claims processing and information retrieval systems--90 percent (id. § 1396b(a)(3)(A)(i));

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*Section 2365 of Public Law 98-369, the Deficit Reduction Act of 1984, 98 Stat. 494, 1108, amended section 1108(c) of the Social Security Act, 42 U.S.C. § 1308(c), to raise the ceiling for the Northern Mariana Islands from $350,000 to $550,000.

The legislation considered by the Commission would have removed a federal constraint that reduces the opportunity for Medicaid patients in the Northern Mariana Islands to receive necessary medical services, a constraint that does not affect Medicaid patients residing in the fifty States.

The legislation would not have encouraged unnecessary medical referrals, since the Northern Mariana Islands still would be required to contribute fifty percent of the transportation and related travel costs. The costs of the actual medical services at the off-island facility would have remained subject to the ceiling on total annual Medicaid payments to the Northern Mariana Islands. Referrals would have to have been certified as medically necessary, and those certifications would have been subject to federal audit. See 42 U.S.C. § 1396a(42).

Removing the ceiling for transportation and related travel expenses would also eliminate any incentive for the Northern Mariana Islands to attempt to establish within the Northern Mariana Islands sophisticated health care facilities equivalent to those in more populated areas. Such facilities would be likely to be underutilized and, consequently, economically wasteful.

(3) operation of mechanized claims processing and information retrieval systems--75 percent (id. § 1396b(a)(3)(B));

(4) family planning services--90 percent (id. § 1396b(a)(5)); and

(5) fraud control--90 percent during the first three years, 75 percent thereafter (id. § 1396b(a)(6)).

The Northern Mariana Islands is now eligible to receive federal funding for these programs at the higher percentages; the fifty percent limitation on federal participation in Medicaid costs in the Northern Mariana Islands does not apply to these programs. See id. §§ 1396b(a), 1396d(b). But, if the Northern Mariana Islands has already reached its ceiling, it cannot receive any further federal Medicaid payments. Medical care for eligible patients will generally have the first claim on federal Medicaid dollars available to the Northern Mariana Islands. The ceiling thus limits Northern Mariana Islands participation in those Medicaid programs for which Congress--through the enhanced percentages--has specifically intended to encourage participation.

The Commission considered recommending to Congress enactment of legislation making the annual limitation on federal Medicaid programs to the Northern Mariana Islands inapplicable to these "enhanced-match" programs. Again, however, because of the increase in that annual limitation by Public Law 98-369, the Commission decided that such legislation is not now necessary.

--another option: treatment as a State. In principle, treating the medically needy in the Northern Mariana Islands and other less developed territories less generously than the medically needy in the States does not seem justified. To accord the territories equal treatment with the States would require both removal of the ceilings on federal Medicaid payments and application of the funding formula applicable to the States, requiring a larger percentage of Medicaid costs to be paid by the Federal Government in poorer jurisdictions than is paid in wealthier jurisdictions.

Were the territories treated as are the States, they would receive substantially larger sums in federal Medicaid assistance. For the Northern Mariana Islands, Guam, the Virgin Islands, and American Samoa, the costs to the Federal Government of equal treatment would appear to be relatively insignificant. For Puerto Rico, with its much larger population, however, the costs of parity would be substantial.

Proposed legislative language.

The following language, if enacted by the United States Congress, would implement this recommendation:

> An Act to authorize the Secretary of Health and Human Services to waive certain medicaid requirements otherwise applicable to the Northern Mariana Islands; and for other purposes.
>
> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that section 1902(j) of the Social Security Act, as amended (42 U.S.C. § 1396a(j)), is further amended by inserting before "American Samoa" each place it occurs "the Northern Mariana Islands and".

* * *

Submerged lands.

Recommendation.

Legislation should be enacted to convey to the Northern Mariana Islands any property rights of the United States in lands permanently or periodically covered by tidal waters within three geographical miles of the coastlines of the Northern Mariana Islands. The proposed legislation is similar to laws already enacted to convey federal interests in submerged lands to the States of the Union, Guam, the Virgin Islands, and American Samoa. The legislation would be without prejudice to any claims the Northern Mariana Islands may have to submerged lands seaward of those conveyed by the legislation. The legislation should become effective on termination of the trusteeship, when sovereignty over the Northern Mariana Islands becomes vested in the United States.

The submerged lands statutes and their present applicability to the Northern Mariana Islands.

Submerged lands are lands covered by water. Although lands beneath rivers, streams, and lakes are submerged lands, the focus here is on lands underlying the ocean.

In 1947 the Supreme Court of the United States decided that revenues from oil obtained from wells drilled into submerged lands within three miles of the coast of California belonged not to the State of California but to the Federal Government. United States v. California, 332 U.S. 19 (1947). The Court found that dominion over seabed resources adjacent to the nation's coastlines is essential to national defense and the conduct of foreign affairs and that, consequently, State governments have no title to those resources.

See also United States v. Maine, 420 U.S. 515, 522-23 (1975); United States v. Louisiana, 339 U.S. 699, 704 (1950).

In 1953 the United States Congress reacted to the Supreme Court decisions finding submerged lands did not belong to the States by enacting the Submerged Lands Act. Act of May 22, 1953, c.65, 67 Stat. 29, now codified at 43 U.S.C. §§ 1301 et seq. The Submerged Lands Act conveyed all proprietary interests of the Federal Government in submerged lands to the States. Only States of the Union received title to submerged lands pursuant to the Submerged Lands Act.

In 1974 Congress enacted legislation similarly conveying, with specified exceptions, all interests of the Federal Government in the submerged lands of Guam, the Virgin Islands, and American Samoa to the governments of those territories. Public Law 93-435, 88 Stat. 1210, now codified at 48 U.S.C. §§ 1705 et seq. In 1980 legislation was enacted to confirm Puerto Rico's title to the submerged lands adjacent to that island. Public Law 96-205, § 606(a), 94 Stat. 84, further amending Act of March 2, 1917, c.145, § 8, 39 Stat. 951, now codified as amended at 48 U.S.C. § 749.

No federal legislation to date has addressed specifically ownership of submerged lands adjacent to the Northern Mariana Islands.

Discussion.

Introduction. Whether the Federal Government or the government of the Northern Mariana Islands owns submerged lands adjacent to the Northern Mariana Islands is important for two purposes, that of determining which government is entitled to any revenues that may be derived from those submerged lands and that of determining which government will control the pace at which the submerged lands are developed, should there be any impetus for such development.

If the Northern Mariana Islands owns the submerged lands, any revenues from their development will go into the treasury of the Northern Mariana Islands where they will be available for appropriation by the elected representatives of the people of the Northern Mariana Islands. If the Federal Government is the owner, the United States Congress, in which the Northern Mariana Islands is not represented, will appropriate those revenues.

At the present time, there is no commercial exploitation of the submerged lands adjacent to the Northern Mariana Islands, so the question of who owns the submerged lands is academic for the moment.

The seabed and its subsoil adjacent to the Northern Mariana Islands may, however, contain valuable manganese nodules and

petroleum and other mineral deposits. Commercial exploitation is not expected in the near future, at least in part because of the great depth of the overlying ocean. See generally Clague, Bischoff, & Howell, Nonfuel Mineral Resources of the Pacific Exclusive Economic Zone in U.S. Dep't of Commerce, National Oceanic and Atmospheric Administration, Exclusive Economic Zone Papers (reprinted from Proceedings of OCEANS '84 Conference organized by the Marine Technology Society and the Institute of Electrical and Electronics Engineers Council on Oceanic Engineering; 1984); Cronan, Deep-Sea Nodules: Distribution and Geochemistry in G. Glasby, Marine Manganese Deposits 11, 13-14 (1977); Nordquist & Moore, Emerging Law of the Sea: Issues in the Mariana Islands, 7 Journal of International Law & Economics 43, 55 (1972); V. McKelvey, et al., Subsea Mineral Resources and Problems Related to their Development 8 (U.S. Geological Survey Circular 619; 1969); Ship to Search Oceans for Riches, Pacific Daily News (Guam), June 15, 1983, at 2.

Submerged lands and the United States Exclusive Economic Zone. On March 10, 1983, President Reagan claimed for the United States an Exclusive Economic Zone contiguous to the territorial sea "of the United States, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands (to the extent consistent with the Covenant and the United Nations Trusteeship Agreement), and United States overseas territories and possessions." Presidential Proclamation 5030, 48 Fed. Reg. 10605. "The Exclusive Economic Zone extends to a distance 200 nautical miles from the baseline from which the breadth of the territorial sea is measured" except where that boundary would conflict with the maritime boundary of another nation. Id. Within the Exclusive Economic Zone, the United States claims exclusive jurisdiction--as against other nations--over the resources of the seabed and subsoil (as well as of the overlying waters).

The statements accompanying the claim of an Exclusive Economic Zone shed no light on the parenthetical qualification of that claim insofar as it affects the ocean and seabed surrounding the Northern Mariana Islands. See U.S. Dep't of State, Bureau of Public Affairs, Oceans Policy and the Exclusive Economic Zone (Current Policy 471, March 10, 1983). The apparent intent of that qualification is, however, to postpone the actual assertion of sovereignty over the Exclusive Economic Zone surrounding the Northern Mariana Islands until termination of the trusteeship, when the Northern Mariana Islands will come under the sovereignty of the United States. Covenant §§ 101, 1003(c). At the same time, asserting the claim on March 10, 1983, rather than delaying assertion of the claim until termination of the trusteeship, places other nations on notice that the ocean area surrounding the Northern Mariana Islands is not available for exploitation by any other nation.

The claim of an Exclusive Economic Zone is a claim by the United States as against other nations. States and territories under the sovereignty of the United States may not claim resources lying

seaward of the Zone, since such a claim would amount to an extension of national sovereignty and intrude on the prerogative of the Federal Government to conduct the international relations of the United States. United States v. California, 381 U.S. 139, 168 (1965); United States v. Louisiana, 363 U.S. 1, 35 (1960); Gross, The Maritime Boundaries of the States, 64 Michigan Law Review 639, 644-45 (1966).

The United States' claim of an Exclusive Economic Zone does not purport to allocate rights within the Zone between the Federal Government and State or territorial governments. Thus, the claim of the Exclusive Economic Zone adjacent to the Northern Mariana Islands by the Federal Government does not, in and of itself, foreclose claims by the Northern Mariana Islands to ownership of submerged lands and seabed resources within the Zone after termination of the trusteeship. (The Northern Mariana Islands will, however, be foreclosed from making any claim to submerged lands or seabed resources lying seaward of the Zone.)

Ownership of submerged lands in the Northern Mariana Islands prior to termination of the trusteeship. Until termination of the trusteeship, the United States has no claim to ownership of submerged lands in the Northern Mariana Islands. Such a claim would be inconsistent with the position of the United States as Administering Authority for the Northern Mariana Islands under the Trusteeship Agreement.

Under the statutory law of the Trust Territory of the Pacific Islands, all lands below the ordinary high water mark (with specified exceptions) belonged to the government of the Trust Territory of the Pacific Islands. 67 Trust Territory Code § 2 (1980).*

In 1974 the United States Department of the Interior provided for the transfer of public lands from the government of the Trust Territory of the Pacific Islands to legal entities in each of the constituent districts of the Trust Territory, including what is now the Northern Mariana Islands. Department of the Interior Order 2969, (December 28, 1974).** Specifically included among the public lands

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*The highest court of the Trust Territory, the Appellate Division of the High Court, has held that this statutory law, in some instances at least, could not divest private individuals or clans of their ownership of submerged lands under Micronesian customary law. Ungeni v. Trust Territory of the Pacific Islands, 8 Trust Territory Reports-- (Civil Appeal 284, August 22, 1983).

**The Department of Interior at that time had all executive, legislative, and judicial authority for the Trust Territory of the Pacific Islands, including the Northern Mariana Islands. 48 U.S.C. § 1681(a); Executive Order 11021, 3 C.F.R. 600 (1959-63 compilation).

to be transferred were "lands defined as public lands by Section . . . 2, Title 67, of the Trust Territory Code," that is, the lands below the ordinary high water mark. Id. § 2(c)(1).

By its Act 100-75, the Marianas District Legislature in 1975 established the Marianas Public Land Corporation to receive public lands pursuant to Department of the Interior Order 2969. See generally Romisher v. Marianas Public Land Corp. (Northern Mariana Islands, Commonwealth Trial Court, Civil Action 83-401, December 28, 1983), slip opinion, at 5-6.

In 1976, shortly after approval of the Covenant by the Congress of the United States, the government of the Northern Mariana Islands was separated from that of the rest of the Trust Territory. Department of the Interior Order 2989 (April 1, 1976). The order separating the Northern Mariana Islands provided that, with certain exceptions, public lands in the Northern Mariana Islands, not previously transferred to a district legal entity pursuant to Department of the Interior Order 2969, vested in the Resident Commissioner.*

On January 9, 1978, the Constitution of the Northern Mariana Islands became effective.** Section 1 of Article XI of that Constitution provides:

> Public Lands. The lands as to which right, title or interest have been or hereafter are transferred from the Trust Territory of the Pacific Islands to any legal entity in the Commonwealth under Secretarial Order 2969 promulgated by the United States Secretary of the Interior on December 26, 1974, the lands as to which right, title or interest have been vested in the Resident Commissioner under Secretarial Order 2989 promulgated by the United States Secretary of the Interior on March 24, 1976, the lands as to which right, title or interest have been or hereafter are transferred to or by the government of the Northern Mariana Islands under article VIII of the Covenant, and the submerged lands off the coast of the

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*The Resident Commissioner was the titular head of the executive branch of government in the Northern Mariana Islands between the administrative separation of the Northern Mariana Islands and January 9, 1978, when the Constitution of the Northern Mariana Islands became effective.

**The Constitution of the Northern Mariana Islands was deemed approved by Presidential Proclamation 4534, 42 Fed. Reg. 56593 (1977).

> Commonwealth to which the Commonwealth now or hereafter may have a claim of ownership under United States law are public lands and belong collectively to the people of the Commonwealth who are of Northern Marianas descent.

Section 2 of the same document provides:

> The management and disposition of submerged lands off the coast of the Commonwealth shall be as provided by law.

Finally, section 801 of the Covenant provides that "[a]ll right, title, and interest of the Government of the Trust Territory of the Pacific Islands in and to real property in the Northern Mariana Islands" will be transferred, no later than on termination of the trusteeship, to the government of the Northern Mariana Islands.

The Northern Mariana Islands has asserted ownership over its submerged lands by requiring licenses for exploration for, development, or extraction of petroleum or mineral deposits "in submerged lands of the Northern Mariana Islands." Northern Mariana Islands Submerged Lands Act, Northern Mariana Islands Public Law 1-23 (1979), 2 Code of the Northern Mariana Islands §§ 1211 et seq. (1984).

Ownership of submerged lands in the Northern Mariana Islands after termination of the trusteeship. On termination of the trusteeship, sovereignty over the Northern Mariana Islands will become vested in the United States. Covenant §§ 101, 1003(c). At that time, ownership of the submerged lands adjacent to the Northern Mariana Islands becomes uncertain. Substantial arguments favor the proposition that the Northern Mariana Islands will continue to be the owner of those submerged lands at that time. There is, however, respectable argument to the contrary, that the Federal Government and not the Northern Mariana Islands will be the owner at that time. The legislation here proposed resolves the issue, as it has been resolved for all other permanently-inhabited jurisdictions under the American flag, by conveying any and all interests the United States may have in defined submerged lands in the Northern Mariana Islands to the Northern Mariana Islands on termination of the trusteeship.

In United States v. California, 332 U.S. 19, 34 (1947), the Supreme Court found ownership of submerged lands to be "a function of national external sovereignty." The Northern Mariana Islands on termination of the trusteeship will come under the national external sovereignty of the United States. Covenant §§ 101, 1003(c). Further, the Supreme Court in that case found national dominion over the submerged lands to be essential to national defense and foreign affairs. On termination of the trusteeship, the "United States will have complete responsibility for and authority with respect to

matters relating to foreign affairs and defense affecting the Northern Mariana Islands." Id. § 104, 1003(c). At first blush, ownership of submerged lands in the Northern Mariana Islands would appear to become vested in the United States on termination of the trusteeship.*

That the Northern Mariana Islands is now the owner of the submerged lands adjacent to its shores does not mean its ownership will survive termination of the trusteeship. The State of Texas, prior to its admission to the Union, was an independent nation. As such, Texas owned the submerged lands adjacent to its coastline. Nonetheless, when Texas became a part of the United States, she relinquished her sovereignty and, by that relinquishment, her proprietary claims to the submerged lands adjacent to her shores. United States v. Texas, 339 U.S. 707, 717-18 (1950).

But a strong argument in favor of continued ownership by the Northern Mariana Islands of adjacent submerged lands after termination of the trusteeship is found in section 801 of the Covenant. That section, it will be recalled, provides that real property interests of the Trust Territory of the Pacific Islands in the Northern Mariana Islands will be transferred to the Northern Mariana Islands no later than on termination of the trusteeship. Under the law of the Trust Territory, submerged lands are real property. Ngiraibiochel v. Trust Territory of the Pacific Islands, 1 Trust Territory Reports 485, 490 (High Court Trial Division Palau 1958).** The government of the Trust Territory of the Pacific Islands is a creature of the government of the United States. 48 U.S.C. § 1681; Executive Order 11021, 3 C.F.R. 600 (1959-63 compilation); Department of the Interior Order 2918. For the United States to agree in the Covenant that the government of the Trust Territory of the Pacific Islands should transfer title to the Northern Mariana Islands on or before termination of the trusteeship, only to have

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*See, adopting this view, the U.S. Department of the Interior memorandum entitled "Submerged Lands--Northern Mariana Islands," from C. Brewster Chapman, Associate Solicitor, Territories, to Director, Office of Territorial Affairs (June 29, 1978). See generally Note, Statehood and the Equal Footing Doctrine: The Case for Puerto Rican Seabed Rights, 88 Yale Law Journal 825 (1979).

**The judges of the High Court are appointed by and serve at the pleasure of the United States Secretary of the Interior. Department of the Interior Order 2918, part IV.

title revert to the United States on that date under the doctrine of United States v. Texas, above, makes little sense.*

For submerged lands within three geographical miles of the coastlines of the Northern Mariana Islands, the legislation here proposed eliminates arguments over ownership after termination of the trusteeship. Any interests the United States may have at that time are quitclaimed to the Northern Mariana Islands by the proposed legislation. If the Northern Mariana Islands is already the owner of those lands, it gains nothing additional from the legislation. If, under United States v. California, above, the United States becomes the owner of those submerged lands on termination of the trusteeship, all of its interests are immediately reconveyed to the Northern

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*Department of the Interior Orders 2969 and 2989, discussed above, make clear that the public lands of the Northern Mariana Islands include lands below the high water mark. If section 801 of the Covenant stood alone, it could be argued that only public lands above the high water mark ("fast lands") are transferred by its provisions. Section 28 of the Organic Act of Guam, 48 U.S.C. § 1421f, transferred certain real property of the United States in Guam to the government of Guam. In a 1958 opinion the Solicitor of the United States Department of Interior held that the real property transferred by section 28 did not include submerged lands, at least in part because Congress in enacting section 28 did not declare in definite terms any intention that "real property" include submerged lands. 65 Decisions of the U.S. Dep't of Interior 193, 197. Because neither section 801 nor its negotiating history mentions submerged lands, it can be argued--with the Department of the Interior opinion as precedent--that section 801 transfers only fast lands. The Ngiraibiochel decision of the Trust Territory High Court, mentioned above, holding submerged lands to be real property, is one answer to this argument.

Another answer is found in the section of the Covenant immediately following section 801. Section 802(a) obligates the government of the Northern Mariana Islands to lease to the Government of the United States, among other areas, certain lands on Tinian Island and on Farallon de Medinilla Island and "the waters immediately adjacent thereto." The clear implication is that waters immediately adjacent to the islands of the Northern Mariana Islands belong to the Northern Mariana Islands and not to the United States, since the United States would have no need to lease what it already owns. See also Northern Mariana Islands Public Law 3-40 (1983), 2 Code of the Northern Mariana Islands §§ 1411-1413 (1984). Against this implication, however, it can be argued that the provision for leasing of adjacent waters was necessary for periods prior to termination of the trusteeship, when the United States would have no claim as sovereign to waters in the Northern Mariana Islands.

Mariana Islands. The legislation here proposed thus follows the track already laid by Congress in conveying submerged lands to the States and to other territories.

The seaward extent of the submerged lands of the Northern Mariana Islands. The proposed legislation conveys to the Northern Mariana Islands whatever interests the United States may have in submerged lands between the high water mark and a line three geographical miles* distant from the coastlines of the Northern Mariana Islands. The proposed legislation expressly disclaims any effects on rights the Northern Mariana Islands may have in the seabed and its subsoil seaward of the three-mile line.

The United States claims, as its territorial sea, waters within three geographical miles of its coastlines. See U.S. Executive Office of the President, White House Fact Sheet on United States Oceans Policy (March 10, 1983), reprinted in part at 77 American Journal of International Law 619, 622-23 (1983). In conveying submerged lands to the States of the United States, Congress included all submerged lands within three geographical miles of the coast of each State.** Submerged lands seaward of these boundaries which "appertain to the United States and are subject to its jurisdiction and control" are termed "the outer Continental Shelf." 43 U.S.C. § 1331(a). Real property interests in the Outer Continental Shelf are vested in the United States and not in the States by the Outer Continental Shelf Lands Act. Id. §§ 1331 et seq., especially

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*"One geographic (or marine or nautical) mile equals approximately 1.15 statute (or land or English) miles. One marine league equals three geographic miles or approximately 3.45 statute miles." United States v. California, 381 U.S. 139, 180 n.4 (1965).

**For States on the Gulf of Mexico, the congressional conveyance included submerged lands in the Gulf to which the State had an historical claim beyond the three-mile limit. In no event, however, did the conveyance include submerged lands more than three marine leagues into the Gulf. 43 U.S.C. § 1301(a), (b).

1332(1), 1332(3), 1333(3).* The Outer Continental Shelf Lands Act

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*A continental shelf is "a shallow submarine plain of varying width forming a border to a continent and typically ending in a steep slope to the oceanic abyss." Webster's New Collegiate Dictionary 243 (1979). In 1945 President Truman claimed United States jurisdiction over the continental shelf contiguous to the United States and the seabed (and fisheries) resources of that shelf. Presidential Proclamation 2667, 3 C.F.R. 67 (1943-48 compilation). "The Truman Proclamation specified no outer limits to jurisdiction, but an accompanying press release referred to the 100-fathom or 600-foot depth line." Krueger & Nordquist, The Evolution of the 200-Mile Exclusive Economic Zone: State Practice in the Pacific Basin, 19 Virginia Journal of International Law 321, 325 (1979). "The 100-fathom and 600-foot depths are approximate equivalents of the 200-meter depth line provided in article 1 of the Convention on the Continental Shelf, done Apr. 29, 1958, 15 U.S.T. 471, T.I.A.S. No. 5578, 499 U.N.T.S. 311." Id. n.21. The United States is a party to that multilateral treaty.

The Outer Continental Shelf Lands Act does not further define the seaward extent of the continental shelf. In the Deep Seabed Hard Mineral Resources Act, 30 U.S.C. §§ 1401 et seq., 1403(2), however, the seaward extent of the "Continental Shelf" is set at the 200-meter depth line "or, beyond that limit, to where the depth of the superjacent waters admits of the exploitation of the natural resources of such submarine area." (The "deep seabed," which that Act regulates, is that part of the seabed lying outside of national exclusive economic zones. Id. §§ 1401(a)(5), 1403(4).)

The application of the Truman Proclamation to submerged lands adjacent to mid-ocean islands is problematic at best, since whatever "shelf" those islands may have is certainly not "continental." Submerged lands more than three miles seaward of the State of Hawaii, however, if they "appertain to the United States and are subject to its jurisdiction and control" fall within the definition of "outer Continental Shelf" for purposes of the Outer Continental Shelf Lands Act. 43 U.S.C. § 1331(a). (Whether there are in fact submerged lands adjacent to Hawaii that fall within the statutory definition has not been investigated in preparing this recommendation.)

In the Northern Mariana Islands, the sea floor generally drops off quite precipitously outside island shores or fringing reefs, so that the 600-foot depth line is often within three geographical miles of the coastline. See, for example, Cloud, Submarine Topography and Shoal-Water Ecology, in U.S. Geological Survey, Geology of Saipan, Mariana Islands 361, 364 and plate 121 (Professional Paper 280; 1958).

does not apply, however, to submerged lands seaward of the boundaries of territories and possessions of the United States, but only to submerged lands seaward of the States. Id. §§ 1301(a), (g); 1331(a).

The legislation conveying submerged lands to Guam, the Virgin Islands, and American Samoa likewise limited the lands conveyed to those within three geographical miles of the coastlines of those territories. 48 U.S.C. § 1705(a). That legislation, like the legislation here proposed, provided that the status of lands beyond the three-mile limit would not be affected by the legislation. Id. § 1706(d).*

The Northern Mariana Islands Submerged Lands Act, as amended by the Northern Mariana Islands Marine Sovereignty Act, includes as submerged lands of the Northern Mariana Islands

> all lands below the ordinary high water mark extending seaward to the outer limit line of the exclusive economic zone established pursuant to the Marine Sovereignty Act of 1980 or to any line of delimitation between such zone and a similar zone of any adjacent State.

Northern Mariana Islands Public Law 1-23 (1980), § 3(a), as amended by Northern Mariana Islands Public Law 2-7, § 17(b) (1980), 2 Code of the Northern Mariana Islands § 1212(a) (1984). The exclusive economic zone is described in the Marine Sovereignty Act as follows:

> The inner limit of the [exclusive economic] zone shall be the outer limit of the territorial sea . . . . [T]he outer limit of the zone is the line every point of which is at a distance of 200-miles from the nearest point of [archipelagic] baselines.

Northern Mariana Islands Public Law 2-7, § 12(a) (1980), 2 Code of the Northern Mariana Islands § 1124(a) (1984). The territorial sea in turn "shall have a breadth of twelve miles. The inner limit of the territorial sea shall be the archipelagic baselines . . . ." Northern Mariana Islands Public Law 2-7, § 8, 2 Code of the Northern

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*The purpose of this provision, however, was "to preclude the possible establishment of a doctrine contrary to existing law pertaining to the United States ownership of the Outer Continental Shelf." Senate Report 93-1152 (1974), reprinted at 1974 U.S. Code Cong. & Ad. News 5464, 5465. While it is difficult to see how conveyance of submerged lands within the three-mile limit could affect ownership of the Outer Continental Shelf, the implication is clear that the Shelf adjacent to Guam, the Virgin Islands, and American Samoa is owned by the United States.

Mariana Islands § 1123 (1984).*

*Section 6 of the same law, 2 Code of the Northern Mariana Islands § 1121, provides, in pertinent part: ". . . (b) The baselines shall be drawn in straight line segments and shall join the outermost points of the outermost islands and drying reefs of the Commonwealth; PROVIDED, that the ratio of the area of the water to the area of the land (including as land all waters lying within the fringing reefs of any island, the waters of any lagoon, and the waters surrounded by the islands of Maug) shall not exceed nine to one.

"(c) The length of any baseline shall not exceed one hundred miles, except that up to three percent of the total number of baselines may exceed that length, up to a maximum length of 125 miles.

"(d) The drawing of such baselines shall not depart to any appreciable extent from the general configuration of the archipelago.

"(e) The baselines shall be drawn to and from low-tide elevations, except that no low-tide elevation situated at a distance more than twelve miles from the nearest island shall be the end point of any baseline unless it is marked by a lighthouse or similar installation which is permanently above sea level."

The United States Department of State has rejected the contention that territorial waters may be measured from archipelagic baselines. "The United States' position is that under international law the territorial sea and other maritime jurisdictions are to be drawn around each island." U.S. Dep't of State, Digest of United States Practice in International Law: 1978, at 943 (1980).

The archipelagic baselines adopted by the Northern Mariana Islands are in substantial conformity with those sanctioned by Article 7 of the United Nations Convention on the Law of the Sea (1982), reprinted at 21 International Legal Materials 1261, 1278-79 (1982). The United States, however, has declined to become a party to the Convention, principally because of dissatisfaction with provisions in the Convention for international control of seabed mining. 18 Weekly Compilation of Presidential Documents 887-88 (1982). Even though the United States did not sign the Convention, it recognizes that much that is in the Convention states current international law. The United States, however, has apparently not taken a position since the Convention was opened for signing on the validity of archipelagic baselines as a matter of international law. See Hearings on U.S. Foreign Policy and the Law of the Sea before the House Committee on Foreign Affairs, 97th Cong., 2d Sess. 95 (1982) (statement of James L. Malone, Assistant Secretary of State, Bureau of Oceans, Environment, and International Scientific Affairs and President's Special Representative for the Law of the Sea Conference).

The Northern Mariana Islands in its own legislation thus claims jurisdiction and control over submerged lands well outside the three-mile limit defining the outer limit of the submerged lands quitclaimed by the United States in the legislation here proposed. The proposed legislation is not intended to either dispute or confirm that claim.*

The coastlines from which the submerged lands of the Northern Mariana Islands are measured. The proposed legislation measures the three-mile limit, defining the extent of the submerged lands conveyed, from the "coastlines" of the Northern Mariana Islands. In this, the proposed legislation follows the model of the earlier legislation conveying submerged lands to Guam, the Virgin Islands, and American Samoa. See 48 U.S.C. § 1705(a). The proposed legislation thus differs, at least in terminology, from the Northern Mariana Islands Marine Sovereignty Act, which uses "archipelagic baselines" to determine the extent of submerged lands.**

Coral reefs lie adjacent to but often at some distance from island shores throughout the Northern Mariana Islands. Whether the extent of submerged lands is measured from the shore of an island or from its fringing reef can make a substantial difference in the location of those submerged lands.

The term "coastlines," as used in the United States Submerged Lands Act, is defined as it is in the Convention on the Territorial Sea and the Contiguous Zone, 15 U.S.T. pt.2, at 1606, T.I.A.S. 5639 (1958), a multilateral treaty to which the United States is a party.*** United States v. Louisiana, 394 U.S. 11, 40 (1969).

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*As an alternative to the proposed legislation, a bill could be drafted to convey to the Northern Mariana Islands all interests of the United States in the Exclusive Economic Zone, insofar as that Zone is measured from the coastlines of the Northern Mariana Islands. As discussed above, the Northern Mariana Islands may already have a claim to ownership of the submerged lands in that area. If that is the case, the conveyance is unnecessary. If that is not the case, such a conveyance to the Northern Mariana Islands would surely give rise to demands for similar legislation by other territories and, perhaps, by the States as well.

**See the second preceding footnote.

***This Convention is also applicable to the Trust Territory of the Pacific Islands, and thus, to the Northern Mariana Islands. U.S. Dep't of State, Trust Territory of the Pacific Islands: 1980, at 135, 142 (1981).

Article 3 of the Convention, in delineating the breadth of the territorial sea of a nation, provides that "the normal baseline for measuring the breadth of the territorial sea is the low-water line along the coast . . . ." Article 11 of the Convention specifies how the territorial sea is measured when there are offshore areas, like coral reefs, above water at low tide but below water at high tide:

> 1. A low-tide elevation is a naturally-formed area of land which is surrounded by and above water at low-tide but submerged at high tide. Where a low-tide elevation is situated wholly or partly at a distance not exceeding the breadth of the territorial sea from the mainland or an island, the low-water line on that elevation may be used as the baseline for measuring the breadth of the territorial sea.
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> 2. Where a low-tide elevation is wholly situated at a distance exceeding the breadth of the territorial sea from the mainland or an island, it has no territorial sea of its own.

See generally 4 Whiteman, Digest of International Law § 9 (1965).

The United Nations Convention of the Law of the Sea distinguishes reefs from low-tide elevations. See Lee, The New Law of the Sea and the Pacific Basin, 12 Ocean Development & International Law 247, 249 (1983). Low-tide elevations are defined exactly as they are in the Convention on the Territorial Sea and the Contiguous Zone. United Nations Convention on the Law of the Sea, Art. 13, reprinted at 21 International Legal Materials 1261 (1982). Reefs, however, are treated separately:

> In the case of islands situated on atolls or of islands having fringing reefs, the baseline for measuring the breadth of the territorial sea is the seaward low-water line of the reef, as shown by the appropriate symbol on charts officially recognized by the coastal State.

Id. Art. 6. As noted earlier, however, the United States has declined, for other reasons, to become a party to this multilateral treaty.

Exceptions in the proposed legislation. The legislation conveying the interests of the United States in submerged lands adjacent to Guam, the Virgin Islands, and American Samoa excepts several categories of submerged lands from the lands conveyed to those territories. 48 U.S.C. § 1705(b). The legislation here proposed excludes only submerged lands under lease to the United States for defense purposes from the general conveyance to the Northern Mariana Islands for so long as those lands are leased. See Covenant §§ 802-803.

The categories excluded from the conveyances of submerged lands to the other territories are generally not relevant to the Northern Mariana Islands. The original exclusion of oil, gas, and other minerals was effectively repealed by section 607(a) of Public Law 96-205, 94 Stat. 84 (1980), 48 U.S.C. § 1705(d). See 48 U.S.C. § 1705(b)(i).* The United States owns no property in the Northern Mariana Islands on the shoreline, so there is no reason to exclude adjacent submerged lands. See id. § 1705(b)(ii). Nor are there any submerged lands in the Northern Mariana Islands that have been filled, reclaimed, or improved by the United States for its own use. See id. § 1705(b)(iv), (v). No submerged lands in the Northern Mariana Islands are within any national park, monument, or reservation, or within the administrative responsibility of any federal agency. See id. § 1705(b)(vi), (viii), (x), (xi). Finally, the conveyance in the proposed legislation is subject to all valid existing rights, so exclusion of submerged lands lawfully acquired by persons other than the United States through purchase, gift, exchange, or otherwise would be redundant. See id. § 1705(a), (b)(ix).

Effective date of the proposed legislation. The effective date of the proposed legislation is the date of termination of the trusteeship. This date is chosen to ensure that whatever interests in submerged lands in the Northern Mariana Islands the United States may acquire when the Northern Mariana Islands comes under the sovereignty of the United States on termination of the trusteeship will be reconveyed immediately to the Northern Mariana Islands. If the legislation became effective before termination of the trusteeship, it would not convey any interests acquired by the United States on the date of termination.

Lawful uses of the high seas unaffected by the proposed legislation. The proposed legislation does not affect the paramount right of the Federal Government to control the ocean overlying the conveyed submerged lands for purposes of national defense, commerce, and the conduct of foreign affairs nor does it affect non-resource-related freedoms of the high seas, such as freedom of navigation and overflight, and other internationally lawful uses of the seas. See, for example, Illinois Central Railroad Co. v. Illinois, 146 U.S. 387, 435, 452-53 (1892).

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*In any case, there are no commercially exploited deposits of oil, gas, or other minerals in the Northern Mariana Islands.

Proposed legislative language.

The following language, if enacted by the United States Congress, would implement the Commission's recommendation:

An Act placing certain submerged lands within the jurisdiction of the government of the Commonwealth of the Northern Mariana Islands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that, subject to valid existing rights, the United States releases, relinquishes, and conveys to the Commonwealth of the Northern Mariana Islands any and all right, title, and interest it may have in submerged lands within the boundaries of the Commonwealth of the Northern Mariana Islands, to be administered in trust for the benefit of the people thereof.

Sec. 2. For purposes of this Act,

(a) "Submerged lands" shall include:

(1) all lands permanently or periodically covered by tidal waters up to but not above the ordinary high water mark as heretofore or hereafter modified by accretion, erosion, and reliction, and seaward to a line three geographical miles distant from the coastlines of the Commonwealth of the Northern Mariana Islands.

(2) all filled in, made, or reclaimed lands which were formerly lands described in paragraph (1) of this subsection; and

(3) all improvements on and all natural resources on or within lands described in paragraphs (1) and (2) of this subsection.

(b) "Covenant" shall mean the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as approved by Public law 94-241, 90 Stat. 263 (1976).

Sec. 3. There are excepted from the transfer made by section 1 of this Act any and all submerged lands leased to the Government of the United States pursuant to sections 802 and 803 of the Covenant for so long as such lands are leased.

Sec. 4. Nothing contained in this Act shall affect such rights, if any, the Commonwealth of the Northern Mariana Islands may have in the seabed and its subsoil, and their natural resources, more than three geographical miles distant from the coastlines of the Commonwealth of the Northern Mariana Islands.

Sec. 5. This Act shall become effective on establishment of the Commonwealth of the Northern Mariana Islands pursuant to sections 101 and 1003(c) of the Covenant.

* * *

Government depository libraries.

Recommendation.

Legislation should be enacted to allow the governor of the Northern Mariana Islands to designate a library in the Northern Mariana Islands as a depository for publications of the United States Government.

The statutes.

To help fulfill its responsibility to inform the public on the policies and programs of the Federal Government, Congress established the Depository Library Program. This program is based upon three principles: (1) with certain specified exceptions, all government publications shall be made available to depository libraries; (2) depository libraries shall be located in each state and congressional district in order to make government publications widely available; and (3) these government publications shall be available for the free use of the general public.

Chapter 19 of title 44 of the U.S. Code is the authority for the establishment and operation of the depository program.

Joint Committee on Printing, U.S. Congress, Government Depository Libraries 1 (rev. ed. 1981). There are more than 1400 congressionally-designated depository libraries throughout the United States. Id. at v.

Present applicability.

At the present time chapter 19 does not specifically authorize designation of a depository library in the Northern Mariana Islands.

Designation of depository libraries in the fifty States and in Puerto Rico, Guam, the Virgin Islands, and American Samoa is permitted by section 1905 of title 44. Section 502(a)(1) of the Covenant makes applicable to the Northern Mariana Islands those laws of the United States which provide federal services in the same way as they apply to Guam. The specific enumeration in section 1905 of officials entitled to designate libraries as depositories might be seen, however, as prevailing over the more general provision of the Covenant.* Since it is desirable to allow designation of a depository library in the Northern Mariana Islands, amendment of section 1905 is advisable.

Discussion.

Establishing a depository library in the Northern Mariana Islands would provide a local source of currently hard-to-find, but basic, government documents, for example, the Code of Federal Regulations and the United States Statutes at Large. Designation of a library as a depository might provide the impetus for development of a more comprehensive and useful library than any now existing in the Northern Mariana Islands. Designation of such a library would also further the congressional objective in establishing the depository library program, assuring that the public has access to information about its government. Indeed, the public in the Northern Mariana Islands, the newest area of the United States, may have a greater need for information on the basic functions of the government.

Whether any institution in the Northern Mariana Islands is now capable of maintaining a depository library is uncertain. A library, to be designated as a depository, must contain at least 10,000 books, other than government publications. 44 U.S.C. § 1909. Establishment and maintenance of a library costs money, particularly in the

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*Section 502(a)(2) of the Covenant makes applicable to the Northern Mariana Islands those laws applicable to Guam and the fifty States as they apply to the several States. Designations of depositories in the several States are made by members of Congress from those States. 44 U.S.C. § 1905. There are no members of Congress from the Northern Mariana Islands, so section 1905 cannot be applied to the Northern Mariana Islands as it is applied to the several States.

tropical climate of the Northern Mariana Islands. Further, there are two depository libraries on Guam, the Nieves M. Flores Memorial Library and the Robert F. Kennedy Memorial Library at the University of Guam.* Joint Committee on Printing, U.S. Congress, Government Depository Libraries 28 (rev. ed. 1981). Overall, it might be less expensive for the users of such a library who reside in the Northern Mariana Islands to travel to the libraries on Guam than for the Northern Mariana Islands to maintain its own library. That travel for the individual user, however, would be expensive, involving airline travel and a probable overnight stay, and many potential users could not in fact afford to make such a trip.

The Northern Mariana Islands should be able to decide whether it wants a depository library, and any obstacles in the federal laws to establishment of such a depository should be removed. The governing statute, section 1905 of title 44, United States Code, does not require, but merely permits, designation of libraries by the officials named for each State and territory. Those officials have no obligation to make such a designation. Further, a library designated as a depository need not accept all government publications. The depository may select only those publications it wants. 44 U.S.C. §§ 1904-1905, 1913.

In section 703(a) of the Covenant, the United States promises "to make available to the Northern Mariana Islands the full range of federal programs and services available to the territories of the United States." The depository library program, available in Puerto Rico, Guam, the Virgin Islands, and American Samoa, should be make available in the Northern Mariana Islands.

Legislation proposed by the Commission in this report lodges the power to designate a library in the Northern Mariana Islands as a depository in the governor of the Northern Mariana Islands. In Guam, the Virgin Islands, and American Samoa, the governor has this power. 44 U.S.C. § 1905. Those precedents are followed here.**

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*The University of Guam is a land-grant college. Public Law 92-318, § 506(a), 86 Stat. 350 (1972), 7 U.S.C. § 301 note. As such, it is a depository for Government publications. 44 U.S.C. § 1906.

**Designation of depository libraries in the various States is made by members of Congress from those States. 44 U.S.C. § 1905. Similarly, designations for Puerto Rico are made by Puerto Rico's Resident Commissioner in Congress. Id. Section 1905 in its present form was enacted before passage of legislation giving Guam, the Virgin Islands, and American Samoa nonvoting Delegates in Congress. Should section 1905 ever be amended to transfer the designating power for those territories from the governors to the Delegates, consideration might be given to transferring the similar power for the Northern Mariana Islands to the Representative to the United States for the Commonwealth of the Northern Mariana Islands.

Proposed legislative language.

The following language, if enacted by the United States Congress, would implement the Commission's recommendation:

An Act to authorize the Governor of the Northern Mariana Islands to designate a library in the Northern Mariana Islands as a depository for publications of the United States Government.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that (a) Section 1905 of title 44, United States Code, is amended:

(1) by deleting, in the first sentence, the phrase "and the Virgin Islands," and inserting in lieu thereof ", the Virgin Islands, and the Northern Mariana Islands,"; and

(2) by amending the last sentence to read as follows:

> The Commissioner of the District of Columbia may designate two depository libraries in the District of Columbia, the Governor of Guam, the Governor of American Samoa, and the Governor of the Northern Mariana Islands may each designate one depository library in Guam, American Samoa, and the Northern Mariana Islands, respectively, and the Governor of the Virgin Islands may designate one depository library on the island of Saint Thomas and one on the island of Saint Croix.

(b) Section 1909 of title 44, United States Code, is amended by inserting after the phrase "American Samoa," each time it appears the phrase "the Northern Mariana Islands,".

* * *

Enforcement of federal laws in the Northern Mariana Islands.

Recommendation.

Legislation should be enacted to confirm the authority of the government of the Northern Mariana Islands to enforce federal laws in the Northern Mariana Islands. The legislation should also authorize federal financial and technical assistance to the government of the Northern Mariana Islands in enforcing federal laws in the Northern Mariana Islands.

Discussion.

Enforcement of federal laws in the Northern Mariana Islands. The Northern Mariana Islands has a small population and is distant from most parts of the United States. Even though many federal laws do, and should, apply in the Northern Mariana Islands, federal agencies entrusted to administer those laws often have neither personnel nor facilities in the Northern Mariana Islands. In some instances, transactions or activities subject to a particular law may justify assignment of federal personnel to the Northern Mariana Islands and the establishment of agency offices there. In many cases, however, transactions or activities subject to the law may be so few or infrequent that the agency will be reluctant to assign personnel to or establish permanent offices in the Northern Mariana Islands. In some of those cases, the federal agency may be able to bring personnel from Guam, Hawaii, or the west coast of the United States on a temporary basis from time to time to carry out its responsibilities in the Northern Mariana Islands.

If neither the temporary nor permanent assignment of federal personnel to the Northern Mariana Islands to enforce a particular federal law applicable in the Northern Mariana Islands is feasible, the law must either be enforced by the government of the Northern Mariana Islands or go unenforced. In many cases federal laws can be enforced by agencies of the government of the Northern Mariana Islands in conjunction with their own responsibilities at little additional expense.

Federal laws controlling the movement of goods across borders of the United States provide a good example of federal laws that may be best enforced by the government of the Northern Mariana Islands. For purposes of many of these federal laws, "United States" includes the Northern Mariana Islands, so that shipments of goods into the Northern Mariana Islands are subject to those laws. See, for example, 7 U.S.C. §§ 154-163 (nursery stock); 15 U.S.C. § 1273 (hazardous substances); 21 U.S.C. §§ 951-969 (narcotics); 26 U.S.C. § 5844 (firearms); 46 U.S.C. § 1461 (boats and boating equipment).

The borders of the United States are generally controlled by the United States Customs Service. 19 C.F.R. §§ 161.0-161.2 (1983); U.S.

Government Manual 429-31 (1982). Officials of other federal agencies, such as the Fish and Wildlife Service of the Department of the Interior and the Animal and Plant Health Inspection Service of the Department of Agriculture, also control goods entering the United States. See, for example, 9 C.F.R. parts 91-97 (1984); 50 C.F.R. part 14 (1984).

The Northern Mariana Islands, however, is outside the customs territory of the United States. Covenant § 603(a). The United States Customs Service and other federal agencies do not assign personnel to ports of entry in the Northern Mariana Islands. They thus do not control the movement of goods into the Northern Mariana Islands. Officials of the government of the Northern Mariana Islands perform that function. Accordingly, if federal laws applicable to the Northern Mariana Islands are to be enforced at the borders of the Northern Mariana Islands, either employees of the federal agencies charged with enforcement of those laws must be assigned to the Northern Mariana Islands or employees of the government of the Northern Mariana Islands must be allowed to enforce those laws. In most cases, efficiency will favor allowing employees of the government of the Northern Mariana Islands already enforcing laws of the Northern Mariana Islands at ports of entry to enforce federal laws controlling goods entering the Northern Mariana Islands as well.

The authority of the government of the Northern Mariana Islands to enforce federal laws. The present authority of the government of the Northern Mariana Islands to enforce federal law applicable to the Northern Mariana Islands is not altogether clear.

States of the United States are encouraged to cooperate in enforcing federal criminal laws. United States v. Chadwick, 415 F.2d 167, 171 (10th Cir. 1969).* And State courts commonly enforce federal laws in civil lawsuits:

> Nothing in the concept of our federal system prevents state courts from enforcing rights created by federal law. Concurrent jurisdiction has been a common phenomenon in our judicial history, and exclusive federal court jurisdiction over cases arising under federal law has been the exception rather than the rule. . . . [O]ur judgment [has] been * * * to affirm the [State court] jurisdiction, where it is not excluded by express provision, or by incompatibility in its exercise arising from the nature of the particular case.

Charles Dowd Box Co. v. Courtney, 368 U.S. 502, 507-08 (1962). See

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*But offenses against the United States may not be prosecuted in State courts. Tennessee v. Davis, 100 U.S. 257 (1880).

also Claflin v. Houseman, 93 U.S. 130, 137 (1876).*

In other cases upholding State power to enforce or implement federal laws, State enforcement or implementation has been pursuant to specific congressional authorization. Thus, in American Horse Protection Association v. Frizzell, 403 F. Supp. 1206, 1221-22 (D. Nev. 1975), the court held a formal agreement between the United States and the State of Nevada did not constitute an illegal delegation of federal management responsibilities to State officials. The court relied, however, on specific authorization for such agreements in the federal statute to be enforced under the agreement. Similarly, in Oklahoma v. Federal Energy Regulatory Commission, 494 F.Supp. 636, 660 (W. D. Okla. 1980), affirmed, 661 F.2d 832 (10th Cir. 1981), certiorari denied, 457 U.S. 1105 (1982), the court held that ". . . the federal government may delegate implementation of federal programs to states willing to comply," and, in the cases discussed therein as precedent, stated the delegation of federal power was specifically authorized in the acts of Congress establishing the various programs.

Even though some cases upholding State power to enforce federal laws rely on specific provision by Congress for State enforcement, no cases have been found denying States power to enforce a federal law in the absence of such a provision. Further, no policy is served by denying States power to enforce federal laws. And, if States do have power to enforce federal laws, so also should territories and possessions. See United States ex rel. Gereau v. Henderson, 526 F.2d 889, 894 (5th Cir. 1976), following Duncan v. Madigan, 278 F.2d 695, 696 (9th Cir. 1960), certiorari denied, 368 U.S. 919 (1961).

Against these judicial precedents, however, are two decisions of the District Court of Guam that appear to hold that, in the absence of specific congressional authorization, the government of Guam has no power to enforce federal laws. In one case, Ex parte Rogers, 104 F. Supp. 393 (1952), the District Court found that authorization in a provision in Guam's Organic Act. The court implied that, but for that provision, the government of Guam would have no power to enforce the federal law at issue in that case. In the other case, Pacific Construction Co. v. Branch, 428 F. Supp. 727 (1976), the District Court, making no mention of the provision in the Organic Act relied upon by the Rogers court, found invalid efforts of the government of Guam to enforce the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136 et seq.

In the Rogers case, the District Court of Guam held:

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*Where Congress expressly gives State courts specific powers to enforce a federal law, the State courts clearly may exercise those powers unless prohibited from doing so by State legislation. Holmgren v. United States, 217 U.S. 509, 517 (1910).

> The Governor of Guam has the residual authority to enforce the immigration laws of the United States in default of performance by the Immigration and Naturalization Service of the United States.

The residual authority is exercised, not as agent of the Immigration and Naturalization Service, but pursuant to section 6b of the Organic Act of Guam, providing that the governor of Guam "shall faithfully execute the laws of the United States applicable to Guam." (The present Organic Act provides that the governor "shall be responsible for the faithful execution of . . . the laws of the United States applicable in Guam." 48 U.S.C. § 1422.)

The governor of the Virgin Islands is also charged with "faithful execution of . . . the laws of the United States applicable in the Virgin Islands." 48 U.S.C. § 1591. Similar provisions existed in now-repealed or obsolete organic legislation for Puerto Rico and the Territories of Alaska and Hawaii. Act of March 2, 1917, c.145, § 12, 39 Stat. 951, as amended by Act of May 17, 1932, c.190, 47 Stat. 158 (Puerto Rico); Act of June 6, 1900, c.786, § 2, 31 Stat. 321 (Alaska); Act of April 30, 1900, c.339, § 67, 31 Stat. 141 (Hawaii).

The governor of the Northern Mariana Islands occupies a post created not by federal law, but by the Constitution of the Northern Mariana Islands.* Section 1 of article III of that document provides only that "The executive power of the Commonwealth shall be vested in a governor who shall be responsible for the faithful execution of the

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*Pursuant to section 202 of the Covenant, the Constitution of the Northern Mariana Islands was deemed approved by the Government of the United States in Presidential Proclamation 4534, 42 Fed. Reg. 56593 (1977).

laws."* Nothing in the Covenant or in other federal statutes specifically confers power on the governor of the Northern Mariana Islands, comparable to that given the governor of Guam by the Organic

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*The position of governor of Puerto Rico is also created by local constitution rather than federal law. Section 4 of article 4 of the Constitution of Puerto Rico provides only that "The Governor shall execute the laws and cause them to be executed" and does not specify whether that authority extends to execution of federal law. The Constitution of the Commonwealth of Puerto Rico was amended and then approved by the United States Congress by Joint Resolution of July 3, 1952, c.567, 66 Stat. 327, and is reprinted following section 731d of title 48, United States Code. See also 48 U.S.C. §§ 731b-731d.

The governor of American Samoa has no specific authority under federal law or the laws of American Samoa to enforce or execute federal laws. See 48 U.S.C. § 1661(c); Executive Order 10264, 16 Fed. Reg. 6419 (1951); Department of the Interior Order 3009 (1977); American Samoa Code § 4.0111 (1981).

Act of Guam, to "faithfully execute the laws of the United States" applicable in the Northern Mariana Islands.*

In the Pacific Construction Co. case, the right of the Guam Environmental Protection Agency to enforce its own regulations implementing the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. §§ 136 et seq., was successfully challenged. The court found that the Act does not grant to the States (including, for

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*An early draft of the Covenant prepared by United States negotiators provided that "the Executive [branch of the government of the Northern Mariana Islands] shall be responsible for the execution of the laws of the United States applicable in the Marianas." The Northern Mariana Islands negotiators rejected that provision on the ground "that it would be inappropriate to charge one government entity like the Commonwealth with executing the laws of another." Marianas Political Status Commission, Memorandum for United States Delegation: Explanation of Agreement to Establish a Self-Governing Commonwealth of the Mariana Islands in Political Union with the United States of America (May 16, 1974). The proposal of this Commission, however, does not require the governor to enforce federal law; it only grants the governor permission to do so. The governor would be under no obligation to enforce federal law.

A comment on an earlier draft of the legislation proposed by the Commission suggested that allowing the elected governor of the Northern Mariana Islands to enforce federal laws might conflict with the Appointments Clause, Article II, Section 2, Clause 2, of the United States Constitution. That clause specifies the manner in which officers of the United States are to be appointed. The governor of the Northern Mariana Islands is not appointed pursuant to that clause. Nothing in the Appointments Clause specifically provides, however, that federal laws may be enforced only by officers of the United States. Federal laws allowing State officials (who, of course, are not appointed pursuant to the Appointments Clause) to enforce those laws are not uncommon. See, for example, 16 U.S.C. §§ 959(b) (Tuna Conventions Act of 1950), 1379(k) (Marine Mammal Protection Act of 1972), 1861 (Magnuson Fishery Conservation and Management Act). See also Oklahoma v. Federal Energy Regulatory Commission and American Horse Protection Association v. Frizzell, above. The authority granted the governor of the Northern Mariana Islands in the Commission's proposed legislation is subordinate to that exercised by officers of the United States. The plenary powers granted Congress by Article IV, Section 3, Clause 2, of the United States Constitution are sufficient to sustain the proposed legislation.

purposes of the Act, Guam) power to limit and inspect pesticides imported from a foreign country. The court noted that the Act delegates the power to control imports to the Secretary of the Treasury. Imports into Guam, however, are controlled not by the Secretary of the Treasury (acting through the United States Customs Service), but by the government of Guam. 19 C.F.R. § 7.8 n.5 (1983). While the Act authorizes cooperative arrangements between the Federal Government and a State for enforcement of the Act, the Federal Government had entered into no such arrangement with the government of Guam. The court concluded, "If the Territory of Guam desires to enforce the Federal Insecticide, Fungicide, and Rodenticide Act, it must do so within the confines of that Act." 428 F. Supp. at 728. The court made no mention of the duty of the governor of Guam, under the Organic Act for Guam, to faithfully execute federal laws applicable to Guam.*

Given the uncertainties in the controlling case law and the specific grants to the governors of Guam and the Virgin Islands of the power to execute federal laws, doubts may exist as to whether the governor of the Northern Mariana Islands may enforce federal laws. Accordingly, legislation is here proposed to confirm the authority of the government of the Northern Mariana Islands to enforce federal laws applicable in the Northern Mariana Islands.

The proposed legislation does not in any way limit the authority of the Federal Government and its agencies independently to enforce federal laws in the Northern Mariana Islands. The proposed legislation also makes clear that, if a federal agency charged with the enforcement of a particular federal law and the government of the Northern Mariana Islands disagree as to how that law is to be enforced, the federal agency's views are controlling.

Financial and technical assistance in enforcing federal laws in the Northern Mariana Islands. The United States does not reimburse the government of the Northern Mariana Islands for expenses incurred by the Northern Mariana Islands in enforcing federal laws at or within its borders. While the people of the Northern Mariana Islands may be the principal beneficiaries of such enforcement, the costs of

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*The authority of government of Guam customs inspectors to enforce federal laws has recently been questioned. See Customs Can't Halt Bogus Items, Pacific Daily News (Guam), July 29, 1982, at 26; Gold Taels Allowed in States--Sometimes, id., April 11, 1982, at 1.

enforcing federal laws principally benefitting the peoples of Hawaii or Nebraska, for example, are borne by the United States, not by the governments of Hawaii or Nebraska. See Customs Rules Disputed, Pacific Daily News (Guam), October 9, 1981, at 3. Federal agencies consequently should be permitted to reimburse the government of the Northern Mariana Islands for costs incurred by that government in enforcing federal laws in the Northern Mariana Islands.

Section 1681(b) of title 48 of the United States Code authorizes any federal agency to provide technical assistance to the Trust Territory of the Pacific Islands "under any program administered by such agency."* That provision may be broad enough to allow technical assistance to the government of the Northern Mariana Islands in enforcing federal laws.** The technical assistance available under section 1681(b), however, is limited in three ways. First, technical assistance to the government of the Northern Mariana Islands under section 1681(b) must be requested by the Secretary of the Interior. Second, in any fiscal year, for all parts of the Trust Territory, it may not exceed $150,000 in nonreimbursable costs. Third, costs of technical assistance are charged to congressional appropriations for the Northern Mariana Islands, not to appropriations for the federal agency.

The legislation here proposed authorizes federal agencies charged with enforcement of particular laws to enter into memoranda of understanding with the government of the Northern Mariana Islands for the provision of financial and technical assistance to that government in enforcing those laws. Technical assistance is not limited as it would be under section 1681(b) of title 48. Rather, the terms of both the financial and the technical assistance to be provided the government of the Northern Mariana Islands by any federal agency are left to negotiation between that government and the agency.***

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*See also 48 U.S.C. § 1469d(a).

**Even though the government of the Trust Territory remains in existence, many of its functions have been distributed to the emerging governments of its constituent entities, including the government of the Northern Mariana Islands. The government of the Northern Mariana Islands should be eligible for assistance under section 1681(b) as a successor to the government of the Trust Territory.

***The financial and technical assistance provisions in the proposed legislation are modelled on section 1421o of title 48 of the United States Code, authorizing the Secretary of Agriculture to provide financial and technical assistance to the government of Guam for improving fire control, watershed protection, and reforestation.

Proposed legislative language.

The following language, if enacted by the United States Congress, would implement the Commission's recommendation:

An Act to authorize the Governor of the Northern Mariana Islands to enforce laws of the United States applicable in the Northern Mariana Islands; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the Governor of the Northern Mariana Islands is authorized to enforce or execute in the Northern Mariana Islands any federal law applicable to the Northern Mariana Islands, provided, however, that, in enforcing or executing any such federal law, the authority exercised by the Governor shall be subject to any direction or control exercised by the federal agency principally charged with the enforcement or execution of that law or, if no federal agency is so charged, by the United States Department of Justice.

Sec. 2. The authority granted to the Governor of the Northern Mariana Islands by section 1 of this Act may be delegated by the Governor to any officer or employee of the Government of the Northern Mariana Islands, either directly, or indirectly by one or more redelegations of authority.

Sec. 3. Any agency of the Federal Government is authorized to provide financial and technical assistance to the Government of the Northern Mariana Islands in enforcing or executing within the Northern Mariana Islands federal laws normally enforced or executed by that agency. Any program for financial and technical assistance as authorized by this section shall be developed in cooperation with the Government of the Northern Mariana Islands and shall be covered by a memorandum of understanding agreed to by the Government of the Northern Mariana Islands and the concerned agency.

* * *

RECOMMENDED TEMPORARY CHANGES IN FEDERAL LAW PENDING TERMINATION OF THE TRUSTEESHIP

The Commission recommends several changes in the applicability of federal laws pending termination of the trusteeship. When the trusteeship ends, the proposed changes will no longer be necessary, because of the changes in the legal status of the Northern Mariana Islands and its citizens that will occur at that time.

The date for termination of the trusteeship is not yet known. During the possibly lengthy period between now and the end of the trusteeship, the application of several federal laws to the Northern Mariana Islands should be altered. The recommended changes are discussed below.

As with the changes in federal laws previously recommended in this report, the recommended changes below are discussed in the order in which the law that is the subject of the recommendation appears in the United States Code.

Permanent resident status in the United States for aliens who are immediate relatives of citizens of the Northern Mariana Islands.

Recommendation.

Legislation should be enacted to allow citizens of the Northern Mariana Islands to petition for permanent resident status in the United States for their immediate relatives.

The statutes.

Aliens entering the United States are classified, first, as immigrants or nonimmigrants. Nonimmigrants are aliens who enter the United States only temporarily, without any intention of permanently leaving their native country. Tourists, diplomats, and students are among those admitted into the United States as nonimmigrants. 8 U.S.C. § 1101(15). Immigrants, by contrast, are aliens who intend to reside permanently in the United States.

Under present law, no more than 270,000 immigrants from all parts of the world may enter the United States each year. 8 U.S.C. § 1151(a). No more than 20,000 immigrants from any particular country (and no more than 600 from a particular colony or dependency of a foreign nation) may be admitted in any given year. Id. § 1152.

Not subject to these numerical limitations are immigrants who are immediate relatives of a United States citizen, and certain refugees and special immigrants. Id. § 1151. "Immediate relatives" are defined to include only the children and spouse of the citizen and, if the citizen is at least twenty-one years of age, his or her parents. Id. § 1151(b).

Present applicability.

The immigration laws of the United States do not apply to the Northern Mariana Islands. Covenant § 503(a). Nonetheless, persons in the Northern Mariana Islands, like all other persons outside the immigration boundaries of the United States, are governed by those laws when they seek to enter or reside in the United States.

On termination of the trusteeship, citizens of the Northern Mariana Islands who have then become citizens of the United States, pursuant to Article III of the Covenant, may petition for admission into the United States of their immediate relatives--children, spouses, and, if the citizen is at least twenty-one years old, parents. Until termination of the trusteeship, however, the Immigration and Naturalization Service cannot accept petitions to grant permanent resident status to aliens who are immediate relatives of citizens of the Northern Mariana Islands. Only United States citizens may petition for the grant of permanent resident status to immediate relatives. 8 U.S.C. § 1151(a), (b); Memorandum from D. Crosland, General Counsel, Immigration and Naturalization Service, to S. Isenstein, Assistant Commissioner for Adjudications, Immigration and Naturalization Service (Sept. 20, 1978). Thus, immediate relatives of citizens of the Northern Mariana Islands, with few exceptions, can enter the United States only as temporary visitors or as immigrants subject to the numerical quotas applicable to their countries of origin.

Discussion.

A number of families in the Northern Mariana Islands are composed partly of citizens of the Northern Mariana Islands and partly of persons who are citizens of other nations. These families are subject to hardship and/or separation should a member of the family who is a citizen of the Northern Mariana Islands desire to reside in the United States for schooling, employment, or other reasons. In other cases, a citizen of the Northern Mariana Islands may feel forced to choose between marriage to an alien spouse and education or employment in the United States. Although the number of persons affected is small, the hardship involved has been brought to the attention of the Commission's staff on several occasions.

Legislation is here proposed to allow citizens of the Northern Mariana Islands to petition for permanent resident status for their immediate relatives. The Commission desires to proceed conservatively in recommending any legislation expanding the categories of persons ultimately eligible for United States citizenship. Accordingly, the Commission proposes that petitions may be filed on behalf of only those persons who, as of the date the proposed legislation is introduced in Congress, are immediate relatives of citizens of the Northern Mariana Islands. (Another date could be substituted for the date of introduction as a cutoff date.) On full implementation of the Covenant, at termination of the trusteeship, citizens of the Northern Mariana Islands will become citizens of the United States. (They will then have this right to

petition under existing law, as United States citizens.*) The date for termination of the trusteeship is not yet known; consequently, the number of aliens who might become immediate relatives of citizens of the Northern Mariana Islands is also unknown. Allowing petitions to be filed on behalf of those aliens who are immediate relatives of citizens of the Northern Mariana Islands as of a specified cutoff date will eliminate a difficult situation for a small number of people at no significant cost to the United States. Should termination of the trusteeship be unduly delayed, subsequent legislation can deal with the situation of those aliens who, after the cutoff date in this proposed legislation, become immediate relatives of citizens of the Northern Mariana Islands.

The proposed legislation by its own terms expires on termination of the trusteeship, when it will no longer serve any purpose.

A "citizen of the Northern Mariana Islands" is defined, for purposes of the proposed legislation, as a person who qualifies as a United States citizen or a United States national under section 8 of the Schedule on Transitional Matters of the Constitution of the Northern Mariana Islands. The Constitution of the Northern Mariana Islands came into effect on January 9, 1978, after approval by the President of the United States. See Proclamation 4534, 43 Fed. Reg. 56593 (Oct. 24, 1977).

Proposed legislative language.

The following language, if enacted by the United States Congress, would implement this recommendation:

> An Act to allow citizens of the Northern Mariana Islands to petition for permanent resident status for their immediate relatives.
>
> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that (a) persons who, on the date of introduction of this Act, are immediate relatives of citizens of the Northern Mariana Islands shall be treated as though they were immediate relatives of citizens of the United States for purposes of the immigration laws of the United States. Any citizen of the Northern Mariana Islands claiming that an alien is entitled to an immediate relative

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*Some citizens of the Northern Mariana Islands may choose to become nationals rather than citizens of the United States at that time. Covenant § 302. Nationals do not have the right to petition for admission of their immediate relatives as permanent residents.

status under section 201(b) of the Immigration and Nationality Act may file a petition with the Attorney General of the United States for such classification.

(b) For purposes of this section, "citizens of the Northern Mariana Islands" are those persons defined as United States citizens or United States nationals in section 8 of the Schedule on Transitional Matters of the Constitution of the Northern Mariana Islands, as approved by Presidential Proclamation 4534 of October 24, 1977.

(c) This section shall expire upon the establishment of the Commonwealth of the Northern Mariana Islands.

* * *

National Consumer Cooperative Bank.

Recommendation.

Legislation should be enacted to allow the National Consumer Cooperative Bank to make its loans and services available to eligible cooperatives in the Northern Mariana Islands.

The statutes.

Chapter 31 of title 12 of the United States Code establishes the National Consumer Cooperative Bank to provide "credit and technical assistance to eligible cooperatives that [provide] goods, services, housing, and other facilities to their members as ultimate consumers." U.S. Government Manual 648 (1982).

Present applicability.

The National Consumer Cooperative Bank is authorized to make loans and offer its services in, among other jurisdictions, the territories and possessions of the United States. 12 U.S.C. § 3011. Although Guam is a territory or possession of the United States, the statute creating the Bank was enacted after January 9, 1978, so that the statute is not made applicable to the Northern Mariana Islands by section 502(a) of the Covenant. Consequently, the Bank may not now make loans or offer services in the Northern Mariana Islands.

On termination of the trusteeship, when the Northern Mariana Islands becomes a territory of the United States, this chapter will become applicable to the Northern Mariana Islands. See Puerto Rico

v. Shell Co., 302 U.S. 253, 257 (1937); United States v. Villarin Gerena, 553 F.2d 723, 724-26 (1st Cir. 1977).

Discussion.

The loans and services of the National Consumer Cooperative Bank should be available to eligible cooperatives in the Northern Mariana Islands. Congress has found that

> user-owned cooperatives are a proven method for broadening ownership and control of the economic organizations, increasing the number of market participants, narrowing price spreads, raising the quality of goods and services available to their membership, and building bridges between producers and consumers, and their members and patrons.

12 U.S.C. § 3001. Enabling the National Consumer Cooperative Bank to provide loans and technical assistance to eligible cooperatives in the Northern Mariana Islands is consistent with both the obligation of the United States to foster the economic development of the Northern Mariana Islands and the promise of the United States to "make available to the Northern Mariana Islands the full range of federal programs and services available to the territories of the United States." Covenant §§ 701, 703(a). Accordingly, even though this chapter will become applicable to the Northern Mariana Islands on termination of the trusteeship, legislation is proposed in this report to make the loans and services of the National Consumer Cooperative Bank immediately available to eligible cooperatives in the Northern Mariana Islands.

Proposed legislative language.

The following language, if enacted by the United States Congress, would implement this recommendation:

> An Act to allow the National Consumer Cooperative Bank to make its loans and services available to eligible cooperatives in the Northern Mariana Islands.
>
> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the fifth sentence of section 101 of Public Law 95-351, 92 Stat. 499, as amended (12 U.S.C. § 3011), is further amended by deleting "and in the Commonwealth of Puerto Rico." and inserting in lieu thereof "in the Commonwealth of Puerto Rico, and in the Northern Mariana Islands.".

* * *

Depository Management Interlocks Act.

Recommendation.

Legislation should be enacted to extend the protections of the Depository Management Interlocks Act to the Northern Mariana Islands.

The statutes.

Chapter 33 of title 12 of the United States Code prohibits management officials of depository institutions or depository holding companies from serving as management officials of other such institutions (except affiliates) within the same geographic area. Depository institutions include banks, trust companies, savings and loan associations, and credit unions, among other organizations. 12 U.S.C. § 3201(1). Depository holding companies include bank holding companies and savings and loan holding companies. Id. § 3201(2).

The House Committee on Banking, Finance and Urban Affairs, in its report on this legislation, noted that "the public's interest is served by competition and that this is particularly important in an industry where competition is already diminished by limited chartering and other regulatory protections." House Report 95-1383, at 14 (1978). The committee further noted that:

> [a]nticompetitive interlocks can have an impact on the flow of credit and financial policies and practices to the detriment of communities, neighborhoods, small businessmen, home buyers, farmers, consumers, and others in need of credit on the best terms possible.

Id.

Present applicability.

The prohibitions of chapter 33 against management interlocks do not apply to depository institutions or depository holding companies which do not do business in any State of the United States, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, or the Virgin Islands. 12 U.S.C. § 3204(4). Thus, by the terms of the chapter, the prohibitions against management interlocks do not apply to depository institutions or depository holding companies doing business only within the Northern Mariana Islands. Although depository institutions and depository holding companies on Guam are subject to the chapter's prohibitions, section 502(a) of the Covenant does not make those prohibitions applicable to similar organizations in the Northern Mariana Islands. The chapter was enacted after January 9, 1978, and thus is not affected by section 502(a) of the Covenant.

On termination of the trusteeship, when the Northern Mariana Islands becomes a territory of the United States, this chapter will become applicable to the Northern Mariana Islands. See Puerto Rico v. Shell Co., 302 U.S. 253, 257 (1937); United States v. Villarin Gerena, 553 F.2d 723, 724-26 (1st Cir. 1977).

Discussion.

Borrowers in the Northern Mariana Islands should be afforded the same protections against anticompetitive practices as borrowers in other parts of the United States. Even though this chapter will become applicable to the Northern Mariana Islands on termination of the trusteeship, legislation to make the chapter immediately applicable to the Northern Mariana Islands is appropriate and is here proposed.

Proposed legislative language.

The following language, if enacted by the United States Congress, would implement this recommendation:

> An Act to extend the protections of the Depository Management Interlocks Act to the Northern Mariana Islands.
>
> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that subsection (4) of section 205 of Public Law 95-630, 92 Stat. 3641 (12 U.S.C. § 3204(4)), is amended by deleting "or the Virgin Islands" and inserting in lieu thereof "the Virgin Islands, or the Northern Mariana Islands".

* * *

Right to financial privacy.

Recommendation.

Legislation should be enacted to make the Right to Financial Privacy Act of 1978 applicable to the Northern Mariana Islands.

The statutes.

The Right to Financial Privacy Act of 1978 is found in chapter 35 of title 12 of the United States Code. This chapter limits the access of federal officials to the records of financial institutions pertaining to particular customers and specifies the procedures that

federal officials must follow when they have a legitimate reason see those records.

Present applicability.

This chapter protects the customer records of financial institutions located in, among other jurisdictions, any State or territory of the United States or Guam. 12 U.S.C. § 3401(1). Thus, by the terms of the chapter, the records of financial institutions in the Northern Mariana Islands are not protected. Although the records of financial institutions on Guam are protected, section 502(a) of the Covenant does not extend those protections to the records of financial institutions in the Northern Mariana Islands. The chapter was enacted after January 9, 1978, and thus is not affected by section 502(a) of the Covenant.

On termination of the trusteeship, when the Northern Mariana Islands becomes a territory of the United States, this chapter will become applicable to the Northern Mariana Islands. See Puerto Rico v. Shell Co., 302 U.S. 253, 257 (1937); United States v. Villarin Gerena, 553 F.2d 723, 724-26 (1st Cir. 1977).

Discussion.

The records of financial institutions located in the Northern Mariana Islands should be available to federal officials on the same terms and under the same conditions as are the records of financial institutions elsewhere in the United States. Residents of the Northern Mariana Islands, who are the principal customers of financial institutions in the Northern Mariana Islands, should be entitled to the same expectations of privacy in their dealings with financial institutions as are residents of other parts of the United States.

Even though this chapter will become applicable to the Northern Mariana Islands on termination of the trusteeship, the date of that termination is so uncertain that legislation ought to be enacted making this chapter immediately applicable to the Northern Mariana Islands.

Proposed legislative language.

The following language, if enacted by the United States Congress, would implement this recommendation:

An Act to make the Right to Financial Privacy Act applicable to the Northern Mariana Islands.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that subsection 1 of section 1101 of Public Law 95-630, 92 Stat. 3641 (12 U.S.C. §3401(1)), is amended by deleting "or the Virgin Islands;" and inserting in lieu thereof "the Virgin Islands, or the Northern Mariana Islands;".

* * *

Creation of special United States passport for citizens of the Northern Mariana Islands.

Recommendation.

Legislation should be enacted to grant the Secretary of State authority to issue special United States passports to citizens of the Northern Mariana Islands confirming their privilege to enter and to reside and be employed in the United States without restriction.

The statute.

A passport is a "travel document issued by competent authority showing the bearer's origin, identity, and nationality . . . ." 8 U.S.C. § 1001(a)(30). A United States passport is a request to "foreign powers" (1) to allow the bearer to enter and to pass freely and safely, and (2) to recognize the right of the bearer to the protection and services of American diplomatic and consular officers. United States v. Laub, 385 U.S. 475, 481 (1966). In recent times, the passport has become a control mechanism over the entry and exit of citizens, crucial to most United States citizens crossing international borders. Kent v. Dulles, 357 U.S. 116, 129 (1958). In addition, because passports include photographs of the bearer and are issued by the national government, they are widely accepted within the issuing nation as a means of identification.

United States passports are issued under the authority of the Secretary of State. 22 U.S.C. § 211a. They are issued only to persons owing allegiance to the United States. Id. § 212.

Present applicability.

Citizens of the Northern Mariana Islands are not now citizens of the United States. They are citizens of the Trust Territory of the Pacific Islands, aliens under United States law. As such, they do not owe allegiance to the United States and, consequently, are not entitled to a United States passport under sections 211a and 212 of title 22 of the United States Code.

On full implementation of the Covenant, citizens of the Northern

Mariana Islands will become citizens of the United States. Covenant § 301. At that time they will be entitled to United States passports.*

Discussion.

United States diplomatic and consular protection of citizens of the Northern Mariana Islands. Article 11(2) of the Trusteeship Agreement, under which the United States administers the Northern Mariana Islands, obligates the United States to provide diplomatic and consular protection to citizens of the Trust Territory travelling outside the Trust Territory or the United States. Section 4 of title 53 of the Trust Territory Code (1966 edition) implies that the High Commissioner of the Trust Territory has the authority to issue passports to citizens of the Trust Territory. The High Commissioner in fact has issued such passports for many years, and continues to do so. The High Commissioner's authority in the Northern Mariana Islands was abrogated on the January 9, 1978, establishment of constitutional government in the Northern Mariana Islands under the Covenant. Nonetheless, the only passport showing entitlement to the diplomatic and consular services of the United States overseas that citizens of the Northern Mariana Islands presently may obtain is a Trust Territory of the Pacific Islands passport, issued by a Trust Territory government which otherwise exercises no governmental functions for the Northern Mariana Islands.

Entry into the United States. On establishment of constitutional government in the Northern Mariana Islands on January 9, 1978, the United States committed itself to allow citizens of the Northern Mariana Islands freely to enter and to reside and work in the United States.** The document principally used to establish Northern Mariana Islands citizenship on entry into the United States is a Certificate of Identity, issued by the government of the Northern Mariana Islands.*** This document does not bear the

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*Within the following six months, such persons may elect to become United States nationals rather than United States citizens by making a prescribed declaration under oath. Covenant § 302. Such an election would not affect their eligibility for a passport under sections 211a and 212 of title 22.

**See cable from F. Potter, U.S. Immigration and Naturalization Service, Washington, D.C., to the Service's field offices (January 4, 1978); Smith v. Pangelinan, 651 F.2d 1320, 1323, 1324, 1325 (9th Cir. 1981).

***See sources cited in the preceding footnote. The certificate of identity is issued pursuant to Northern Mariana Islands Public Law 1-6 (1978), 3 Code of the Northern Mariana Islands §§ 4111 et seq. (1984).

imprimatur of the United States Government and its acceptability, while sanctioned in a cable to field offices of the Immigration and Naturalization Service, has not been recognized in the United States Code or the Code of Federal Regulations.

Further complicating entry into the United States for citizens of the Northern Mariana Islands is section 212.1(d) of title 8 of the Code of Federal Regulations (1985):*

> A visa and a passport are not required of a native and resident of the Trust Territory of the Pacific Islands who has proceeded in direct and continuous transit from the Trust Territory to the United States.

This regulation implies that a visa and a passport are required of someone from the Trust Territory (including the Northern Mariana Islands) if that person is not in direct and continuous transit from the Trust Territory to the United States. Thus, a citizen of the Northern Mariana Islands entering the United States from, say, Canada may be asked not only for a Trust Territory passport, but also for a visa from a United States consular officer.

Identification. Neither the Trust Territory passport nor the Northern Mariana Islands Certificate of Identity is an ideal means of identification for citizens of the Northern Mariana Islands in the United States. Neither document is issued under the apparent authority of the United States Government. Employers, school officials, local government employees, and others in the United States to whom it may be necessary to present identification are seldom familiar with either the Trust Territory of the Pacific Islands or the Northern Mariana Islands and are even less cognizant of the privileges accorded citizens of those jurisdictions in the United States. While citizens of the Northern Mariana Islands are guaranteed the privileges and immunities of citizens of the several States under section 301 of the Covenant, to establish those privileges and immunities they must not only prove their Northern Mariana Islands citizenship, but also their special status under the Covenant. Even then, a skeptical official pressed for time may deny

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*See also 22 C.F.R. § 41.6(d) (1984), which is identical in language.

to them privileges or immunities to which they are entitled.*

The proposed special passport. The special passport proposed herein would be issued by the Secretary of State and would identify the bearer as a citizen of the Northern Mariana Islands, not as a citizen of the United States. A "citizen of the Northern Mariana Islands" for purposes of the proposed legislation is defined therein as a person who qualified as a United States citizen or a United States national under section 8 of the Schedule on Transitional Matters of the Constitution of the Northern Mariana Islands. The Constitution of the Northern Mariana Islands came into effect on January 9, 1978, after approval by the President of the United States. See Proclamation 4534, 42 Fed. Reg. 56593 (October 24, 1977).

Like the Trust Territory passport, the special passport would recite the right of the bearer to the diplomatic and consular protection of the United States while in foreign countries. Like the identification cards issued to aliens lawfully admitted to permanent residence in the United States, the special passport would recite the right of the bearer to reside permanently and work in the United States. In all other respects, the proposed special passport would be subject to the rules, regulations, and fees applicable to passports issued by the Secretary of State pursuant to section 211a of title 22 of the United States Code.

The policy of the United States Immigration and Naturalization Service allows citizens of the Northern Mariana Islands freely to enter and to reside and work in the United States. In the early months of 1981, this policy was temporarily reversed, to the great consternation of citizens of the Northern Mariana Islands. The public outcry was vehement and the earlier policy was quickly reinstated. The temporary reversal of policy was attributable in part to a lack of clear and specific statutory authority, beyond the general language of the Covenant, for the earlier policy. The legislation here recommended would provide that clear and specific authority.

Only until full implementation of the Covenant is legislation necessary for citizens of the Northern Mariana Islands to obtain a passport from the Secretary of State. For this reason authority for

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*Should current efforts to penalize employment of illegal aliens in the United States be enacted into law, the need for acceptable identification becomes more critical. The average employer may be forgiven for not knowing the peculiar citizenship status of citizens of the Northern Mariana Islands and, thus, for opting in favor of not hiring--and not risking criminal penalties--over spending time and money to verify that citizens of the Northern Mariana Islands can be hired. See, for example, S. 529, 98th Cong., 1st Sess. § 101 (1983).

issuance of a special passport under the recommended legislation expires at that time. (Section 217a of title 22 limits the validity of passports to five years, so no passport issued under the proposed legislation could be valid for more than five years after full implementation of the Covenant.)

Full implementation of the Covenant will occur when the United Nations trusteeship pursuant to which the United States presently administers the Trust Territory of the Pacific Islands, including the Northern Mariana Islands, is terminated. Covenant § 1003(c). The date for termination of the trusteeship is not yet known. During the possibly-lengthy period between now and the end of the trusteeship, a special passport issued by the Secretary of State would be very useful to citizens of the Northern Mariana Islands travelling overseas, or entering, residing, or seeking employment in the United States.

Proposed legislative language.

The following language, if enacted by the United States Congress, would implement the Commission's recommendation:

> An Act to authorize the issuance of special United States passports to citizens of the Northern Mariana Islands.
>
> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that the Secretary of State or persons designated by the Secretary of State shall issue special United States passports to citizens of the Northern Mariana Islands, notwithstanding section 4076 of the Revised Statutes of 1878, as amended (22 U.S.C. § 212). These passports shall recite the privilege of citizens of the Northern Mariana Islands to enter, and to reside and be employed in the United States, and to enjoy the diplomatic and consular protection of the United States in foreign countries.
>
> Sec. 2. For purposes of this Act, "citizens of the Northern Mariana Islands" are those persons defined as United States citizens or United States nationals in section 8 of the Schedule on Transitional Matters of the Constitution of the Northern Mariana Islands, as approved by Presidential Proclamation 4534 of October 24, 1977.
>
> Sec. 3. This Act shall expire upon the establishment of the Commonwealth of the Northern Mariana Islands.

* * *

TITLE-BY-TITLE SURVEY

OF THE UNITED STATES CODE

As noted in the introduction to this Report, the Commission has focussed on existing problems in the application of particular federal laws to the Northern Mariana Islands and has not proceeded sequentially from title 1 through title 50 of the United States Code. Recommendations for legislation to resolve problems in the application of particular federal laws to the Northern Mariana Islands are contained in the preceding section of this report. In this title-by-title survey, the Commission collects its work on the various parts of the United States Code for which the Commission has recommended no legislation. In some instances the Commission affirmatively recommends that the status quo be maintained. For other statutes, the Commission merely briefly describes the statute and notes whether or not the statute is now applicable to the Northern Mariana Islands. For yet other statutes, a brief discussion of the pros and cons of applying the statute is included.

The Commission did not examine the entire United States Code, preferring to devote time to addressing specific problem areas and to omit detailed study of parts of the Code very unlikely to be troublesome to the Northern Mariana Islands, for example, title 36 on Patriotic Societies and Observances. For those titles not discussed in detail in the survey below, the extent to which the Commission examined the title is indicated.

The title-by-title survey follows the organization of the United States Code. Accordingly, while the survey has neither a detailed table of contents nor an index, the detailed table of contents and index of the United States Code may be used to locate particular subjects in the survey.

The Commission anticipates that most users of this survey will look only at statutes of particular interest to them, and will not read the entire survey. For this reason, the Commission has allowed a certain amount of redundancy, particularly in discussing the present applicability of statutes, so that the reader will not have to pursue a chain of cross-references through the discussion of other statutes in order to understand the conclusions of the Commission.

The summaries of statutes given in the survey are intended only to give the gist of each statute. The summaries do not describe each provision, each condition, and each qualification in the statute. For these details, the reader must consult the statute itself.

TITLE 1. GENERAL PROVISIONS.

The statutes.

This title of the United States Code governs the formalities of enacting and publishing laws of the United States and sets forth certain rules for construction of those laws.

Present applicability.

By reason of its subject matter, title 1 is generally applicable to all areas subject to the law-making authority of the United States. The Northern Mariana Islands is subject to that law-making authority. Trusteeship Agreement, Art. 3; Covenant §§ 101, 1003(c).

Two minor questions of applicability are raised by provisions in title 1. Section 2 defines "county," as used in the laws of the United States, to include a parish or any other equivalent subdivision of a State or Territory of the United States. A question exists as to whether the highest level of political subdivision in the Northern Mariana Islands, the municipality, would qualify as a "county" under section 2. Resolution of that question depends on whether Guam is a "Territory" within the meaning of section 2. If it is, the Northern Mariana Islands would be afforded equivalent treatment by operation of section 502(a)(2) of the Covenant, and the municipalities of the Northern Mariana Islands would qualify as "counties" for purposes of the laws of the United States.

Section 204 of title 1 specifies the evidentiary effect of the United States Code, the District of Columbia Code, and their supplements in the courts, tribunals, and public offices of, among other places, each State, Territory, or insular possession of the United States. Guam is a "Territory" or "insular possession" of the United States. Accordingly, by operation of section 502(a)(2) of the Covenant, the evidentiary rules set forth in section 204 are applicable in the courts, tribunals, and public offices of the Northern Mariana Islands.

TITLE 2. THE CONGRESS.

The statutes.

All legislative powers granted the Federal Government by the United States Constitution are vested in the Congress of the United

States, which consists of the Senate and the House of Representatives. U.S. Const., Art. I, § 1. The members of the Senate and of the House of Representatives are elected by the citizens of the States of the United States. Id. § 2, cl. 1; Amend. XVII, amending Art. I, § 3, cl.1.

Title 2 collects statutes governing the election of Senators and Representatives, the leadership and organization of the two houses of Congress, the conduct of congressional business, the compensation and expenses of members, and the functions of such congressional adjuncts as the Library of Congress.

Present applicability.

The United States Constitution contains no provision for representation in Congress of citizens residing in areas within the jurisdiction of the United States but not part of any State. Provision for a nonvoting delegate to Congress to represent areas within the United States that are not States of the United States has been common practice since the Ordinance of 1787.

Discussion.

See the recommendation, A nonvoting delegate to the United States Congress, in the Recommendations section of this report.

TITLE 3. THE PRESIDENT.

The statutes.

This title contains statutes governing the presidency of the United States. The title specifies how presidential elections are to be conducted and the procedure to be followed should a vacancy occur in the office of President. The title also sets compensation and expense allowances for the President and Vice President, and authorizes staff and office expenditures for each. The title authorizes Secret Service protection for the President, Vice President, and others. Finally, title 3 authorizes the President to delegate the performance of presidential functions to subordinate officials.

Present applicability.

The President, as the head of the executive branch of the government of the United States, has ultimate authority for all federal executive branch activity within the Northern Mariana Islands.

Most citizens of the Northern Mariana Islands will become citizens of the United States on termination of the trusteeship. Covenant §§ 301, 1003(c). At that time, however, they will not become eligible to vote for the President of the United States (unless they first leave the Northern Mariana Islands and become residents of one of the States). The President (and the Vice President) are elected through the electoral college. The electoral college, under Article II, Section 1, Clause 2 of the United States Constitution, is composed of electors appointed by each State in a number equal to the number of Senators and Representatives from that State. See also 3 U.S.C. § 3. No provision exists in the Constitution for appointment of electors from the territories, although the Twenty-third Amendment to the Constitution allows the District of Columbia to appoint members to the electoral college as though it were a State. See also 3 U.S.C. § 21.

Discussion.

Denying United States citizens residing in territories of the United States the right to vote in presidential elections is inconsistent with a fundamental premise of democracy, that the right to govern rests on the assent of the governed. Denying them that right, however, is not inconsistent with the Constitution. Indeed, the Constitution does not grant citizens the right to vote, but leaves to the States who shall vote.

In 1982 the Attorney General of Guam filed an action seeking for United States citizens residing on Guam the right to vote in presidential elections, noting that United States citizens residing overseas are able to vote in those elections. See 42 U.S.C. §§ 1973dd et seq. (Citizens overseas, however, are able to vote only by absentee ballot in the State in which they were last domiciled.) The Guam lawsuit was dismissed, based on the express provisions of the Constitution governing the electoral college. The dismissal was affirmed by the United States Court of Appeals for the Ninth Circuit. Attorney General of Territory of Guam v. United States, 738 F.2d 1017 (1984), certiorari denied, 53 U.S.L.W. 3592 (February 19, 1985) (No. 84-666). See also Sanchez v. United States, 376 F. Supp. 239 (D.P.R. 1974); District Judge Dismisses Case for Presidential Vote, Pacific Daily News (Guam), February 19, 1983, at 3.

Citizens of the United States residing in the Northern Mariana Islands (after termination of the trusteeship) and in other territories and possessions should have the right to vote in

presidential elections. Amendment of the United States Constitution is necessary, however, to grant them that right.*

TITLE 4. FLAG AND SEAL, SEAT OF GOVERNMENT, AND THE STATES.

The statutes.

This title collects statutes describing the flag and seal of the United States, fixing the national capital in the District of Columbia, governing certain relations between the Federal Government and the States, and providing for the publication of official papers of the Territories from which States of the United States were formed.

Among the statutes governing relations between the Federal Government and the States are provisions allowing any State to apply gasoline taxes and sales taxes on transactions occurring on military bases and other federal lands within the State. State income taxes may also be levied on persons residing on or receiving income from federal areas and on federal employees.

Under Article I, Section 10, Clause 3 of the United States Constitution, the consent of Congress is necessary before two or more States may enter into any agreement with each other. Section 112 of title 4 grants blanket congressional consent for agreements between States for the prevention of crime and the enforcement of State criminal laws.

Finally, section 113 of title 4 prohibits States in which members of Congress reside in order to attend sessions of Congress from levying income taxes on those members (unless the member represents that State or a political subdivision thereof). In effect, this provision prevents the District of Columbia and the neighboring States of Maryland and Virginia from taxing the income of members of Congress who represent other jurisdictions but who reside in the District of Columbia, Maryland, or Virginia in order to attend Congress.

Present applicability.

Most of title 4 is concerned with national attributes of the United States: the flag, the seal, and the national capital. These

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*One proposed constitutional amendment would have allowed a single electoral vote to be shared by American Samoa, Guam, the Virgin Islands, and the Northern Mariana Islands. House Joint Resolution 161, 97th Cong., 1st Sess. (1981). That proposal, however, was never reported out of committee in the House of Representatives.

statutes apply to the United States itself and not to particular geographical or political subdivisions of the United States. No purpose is served by attempting to determine their particular applicability to the Northern Mariana Islands. The national flag that flies in the Northern Mariana Islands is identical to the flag that flies in Washington, D.C. and to the flag flown in foreign countries when the flag of the United States is displayed.

The provisions of title 4 governing the taxing powers of the States over federal employees and other federally-affected persons or transactions either specifically treat Guam in the same manner as a State or treat all territories and possessions of the United States as States are treated. 4 U.S.C. §§ 104(c), 110(d). Since Guam is a territory or possession, by operation of section 502(a)(2) of the Covenant, the Northern Mariana Islands may tax federal employees and other federally-affected persons or transactions in the same manner as may the States.

"State" is also defined to include Guam for purposes of the statute granting congressional consent to interstate compacts for criminal law enforcement. Id. § 112(b). Accordingly, by operation of section 502(a)(2) of the Covenant, the Northern Mariana Islands may be a party to such compacts.

Legislation recommended in this report would provide the Northern Mariana Islands a nonvoting delegate in the United States House of Representatives.* That legislation accords to the delegate "whatever privileges and immunities that are, or hereinafter may be, granted to the nonvoting Delegate from the Territory of Guam." Section 113 of title 4, exempting most members of Congress from income taxes imposed by Maryland, Virginia, and the District of Columbia, defines "Member of Congress" to include the delegate from Guam. 4 U.S.C. § 113(b)(1). Accordingly, if the legislation recommended by the Commission is enacted, the delegate from the Northern Mariana Islands would also be entitled to this exemption from State income taxes.

TITLE 5. GOVERNMENT ORGANIZATION AND EMPLOYEES.

The 40 chapters of title 5 are divided among three parts. Part I contains laws generally applicable to agencies of the Federal Government. Part II sets forth the structure of the federal civil

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*See the recommendation, A nonvoting delegate to the United States Congress, in the Recommendations section of this report.

service system and also includes portions of the Hatch Act, restricting the political activities of State and local employees. Part III establishes employment conditions, compensation, and fringe benefits for the federal work force, and includes Hatch Act restrictions on the political activities of federal employees.

PART I. THE AGENCIES GENERALLY.

The statutes.

The first part of title 5 concerns general agency matters, including the organization of the executive branch (chapter 1), the powers of federal agencies to issue regulations and delegate authority (chapter 3), administrative procedures (chapter 5), judicial review of agency action (chapter 7), and reorganization of executive agencies to improve efficiency (chapter 9).* Provision is also made for analysis of regulatory functions by agencies so that flexible approaches to rule-making and regulation may benefit small businesses and other small organizations and governmental jurisdictions (chapter 6). Chapters 5 and 7, governing administrative procedures and judicial review of agency action, are particularly important, and are discussed in greater detail below.

Chapters 5 and 7 contain the Administrative Procedure Act (APA).** 5 U.S.C. §§ 551 et seq., 701 et seq. The APA is perhaps the most important provision in federal law for individuals who seek to understand the basis for administrative actions or to obtain redress from agency actions. The APA provides "greater uniformity and standardization of administrative practice among the diverse agencies whose customs had [previously] departed widely from each other." Wong Yang Sung v. McGrath, 339 U.S. 33, 41 (1949). "More fundamental, however, was the purpose to curtail and change the practice of embodying in one person or agency the duties of prosecutor and judge." Id.

Chapter 5 requires public notice of agency actions, usually through publication in the Federal Register. 5 U.S.C. §§ 552, 553. Section 552 includes the Freedom of Information Act, which makes

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*Title 5 originally contained only odd-numbered chapters; newer legislation has been inserted as even-numbered chapters.

**Chapter 5 also creates the Administrative Conference of the United States to recommend improvements in the procedures of Federal agencies. 5 U.S.C. §§ 571 et seq.

information in the possession of government agencies generally available to the public, unless the information falls within certain narrowly defined exemptions. Other provisions require agencies to protect the privacy of information on individuals, id. § 552a;* to hold open meetings, id. § 552b;** and to conduct fair hearings and reviews of their actions, id. §§ 554-558.

Chapter 7, also part of the APA, provides statutory authority for judicial review of agency actions. Usually, persons must exhaust any administrative remedies that exist before they may go to court.*** Chapter 7 establishes not only the right of review in most cases, 5 U.S.C. § 702, but also the manner of review and the relief available. Id. §§ 703-706. As stated by one author:

> The basic remedy against illegal administrative action is judicial review. A person aggrieved by an agency decision or other act may challenge its legality in the courts. In the American system, where even legislative action is subject to judicial control, there has never been any question of the propriety of judicial review of agency action. Judicial review is the balance wheel of administrative law. It enables practical effect to be given to the ultra vires theory upon which administrative power is based. "When Congress passes an Act empowering administrative agencies to carry on governmental activities, the power of those agencies is circumscribed by the authority granted." The responsibility of enforcing the limits of statutory grants of authority is a judicial function; when an agency oversteps its legal bounds, the courts will intervene. Without judicial review, statutory limits would be naught but empty words.

B. Schwartz, Administrative Law 429 (1976) (footnotes omitted), in turn quoting from Stark v. Wickard, 321 U.S. 288, 309 (1944).

Present applicability.

Chapters 1 and 3 of title 5, establishing the organization of the Federal Government and delineating the powers of federal

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*This section was enacted by the Privacy Act of 1974.

**This section was enacted by the Government in the Sunshine Act of 1976.

***See, for example, 1 B. Mezines, J. Stein & J. Gruff, Administrative Law § 1.01[3] (1982).

agencies, contain no provisions describing the geographic applicability of those chapters. The nature of the provisions in those chapters is such, however, that it is generally of no import whether those provisions are considered applicable or inapplicable. One provision, however, deserves comment: Section 304 authorizes federal agency heads to obtain subpenas in certain cases from "a judge or a clerk of a court of the United States" to compel testimony from a witness within the jurisdiction of that court. The District Court for the Northern Mariana Islands was created by a law of the United States, Public Law 95-157, 91 Stat. 1265 (1977), and has the jurisdiction of a district court of the United States, id. § 2, 48 U.S.C. § 1694a. Accordingly, it is a court of the United States from which a federal agency head may obtain a subpena to compel testimony from any witness found within the Northern Mariana Islands pursuant to section 304 of title 5.

The Administrative Procedure Act, including its freedom of information provisions, contained in chapters 5 and 7 is generally not limited geographically and applies to federal agencies wherever they operate, although with enumerated limitations.* Constructores Civiles de Centroamerica, S.A. v. Hannah, 459 F.2d 1183 (D.C. Cir. 1972) (federal agency actions in foreign country reviewable under APA); Ralpho v. Bell, 569 F.2d 607 (D.C. Cir. 1977) (federal agency actions in Trust Territory of the Pacific Islands reviewable under APA). See also People of Saipan v. United States Department of Interior, 502 F.2d 90 (9th Cir. 1974), certiorari denied, 420 U.S. 1003 (1975).

Several provisions in chapter 5 merit particular comment. Section 500 allows lawyers admitted to practice before the highest court of a State also to practice before federal agencies. "State" is defined to include any territory or possession of the United States and thus includes Guam. By operation of section 502(a)(2) of the Covenant, lawyers admitted to practice before the highest court of the Northern Mariana Islands also may practice before federal agencies.

The provisions of section 552a, controlling access to government records on individuals, define "individual" to mean a citizen of the United States or an alien lawfully admitted for permanent residence. Id. § 552a(a)(2). Since most citizens of the Northern Mariana Islands are neither citizens of the United States nor permanent resident aliens, they could be denied the Privacy Act protections contained in this section. For this reason, the Commission in its January 1982 interim report to the United States Congress,

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*See, for example, 5 U.S.C. §§ 551(1)(A)-(H); 552(b); 701(a), (b)(1)(A)-(H).

recommended enactment of legislation to treat citizens of the Northern Mariana Islands as citizens of the United States for purposes of this requirement. In 1983 Congress enacted Public Law 98-213, 97 Stat. 1459. Sections 19 to 23 of that statute allow the President by proclamation to declare that citizenship requirements in particular federal laws are not applicable to citizens of the Northern Mariana Islands. In 1984 the President removed for citizens of the Northern Mariana Islands the citizenship restriction of section 552a(a)(2). Presidential Proclamation 5207, § 5(b), 49 Fed. Reg. 24365.

Subchapter III (sections 571 to 576) of chapter 5 establishes the Administrative Conference of the United States to study and make recommendations on improving the administrative procedures of federal agencies. Recommendations of the Administrative Conference put into effect by the President, Congress, or particular federal agencies will affect the Northern Mariana Islands to the extent the particular administrative procedure that is the subject of the recommendation affects the Northern Mariana Islands.

PART II. CIVIL SERVICE FUNCTIONS AND RESPONSIBILITIES.

The statutes.

Chapters 11 to 13 of title 5 create the Office of Personnel Management and the Merit Systems Protection Board. The Office of Personnel Management (OPM) is a successor to the Civil Service Commission. It administers the merit system for federal employment, governing the recruiting, examining, training, and promoting of federal personnel. U.S. Government Manual 578-81 (1982). The Merit Systems Protection Board, an agency separate from OPM, also succeeds to certain functions of the Civil Service Commission. The Board protects the integrity of the federal merit system and the rights of federal workers. Id. at 544-46.

Chapter 15 regulates the political activity of certain State and local employees. The chapter is part of the Hatch Act, discussed below, and circumscribes the political activity of employees of federally funded State programs or agencies. Violations of this provision result in agency withholding of grants or loans equivalent to the pay of the individual involved. See 5 C.F.R. part 151 (1984).

Present applicability.

The geographical area of operations of the Office of Personnel Management and the Merit Systems Protection Board are not defined by statute. But the jurisdiction of these agencies extends to all federal civil servants, although the agencies may treat employees differently depending upon, among other things, their place of employment.

"State" is defined, for purposes of the restrictions on political activities of State and local employees, to include the territories and possessions of the United States. 5 U.S.C. § 1501(1). Since Guam is a territory or possession of the United States, by operation of section 502(a)(2) of the Covenant, the restrictions also apply to employees of programs of the government of the Northern Mariana Islands and its local subdivisions receiving federal funds.

PART III. EMPLOYEES.

The statutes.

Seven subparts in part III of title 5 set forth rules governing the working conditions, compensation, and fringe benefits of federal civil service employees. The subparts cover these categories: hiring and retention, performance criteria, pay rates and allowances, work hours, employee relations, adverse actions and appeals, worker's compensation, retirement, unemployment, and life and health insurance. The Office of Personnel Management administers the entire system. 5 U.S.C. §§ 2101 et seq.

This part of title 5 also includes the portions of the Hatch Act that prevent federal employees from acting in their official capacity to influence elections and from taking an active part in political campaigns. 5 U.S.C. § 7324. See also 5 C.F.R. part 733 (1984). The Act does not prohibit participation in nonpartisan politics, such as in elections in which no political party candidates run or on questions--such as referenda, constitutional amendments, and the like--not identified with a political party. 5 U.S.C. § 7326.

Present applicability.

Part III governs the internal workings of the Federal Government and generally contains no provisions specifying geographic applicability. In some instances, however, the statutes contained in part III do specifically mention the territories and possessions of the United States. Since Guam is a territory or possession, those statutes, by operation of section 502(a)(2) of the Covenant, are generally applicable to the Northern Mariana Islands. One section, for example, provides that oaths of office may be administered in territories and possessions pursuant to local law. 5 U.S.C. § 2903. Another requires examinations for the civil service register to be held in each State and territory or possession at least twice a year. 5 U.S.C. §§ 3305. Other provisions allow agencies to assign personnel to State agencies, which are defined to include agencies of territories and possessions. 5 U.S.C. §§ 3371 et seq.

Federal agencies are allowed to recruit personnel for employment in overseas areas without regard to the usual civil service

requirements. 5 C.F.R. parts 8, 301 (1984). Overseas areas are defined as those areas not part of the continental United States, Alaska, Hawaii, Puerto Rico, the Virgin Islands, or the Isthmus of Panama. Id. § 8.4. Guam and the Northern Mariana Islands are thus considered as overseas areas for purposes of recruitment. For most civil service purposes, however, Guam is not considered an overseas area. Id. § 210.102(b)(9). By operation of section 502(a)(2) of the Covenant, if a law does not treat Guam and the several States as an overseas area, the Northern Mariana Islands also is not an overseas area for purposes of that law. Accordingly, while Guam and the Northern Mariana Islands are treated as overseas areas for purposes of recruitment of federal civil service employees, they are treated in the same manner as the States of the United States in virtually all other matters affecting federal civil service employment. Thus, although competitive examinations for listing on the civil service registers of persons available for federal employment must be given in the Northern Mariana Islands at least twice each year (if there are persons who have applied to take the examination), 5 U.S.C. §§ 3305, appointments to federal civil service positions in the Northern Mariana Islands (and Guam) need not be made from those registers. 5 C.F.R. §§ 8.2, 8.4 (1984). (Persons so appointed, however, do not acquire "competitive status" in the civil service system. Id. § 8.2.)

The Federal Government generally requires United States citizenship for employment in the civil service. Executive Order 11935 (1976), 5 C.F.R. § 7.4 (1984), reprinted in note following 5 U.S.C. § 3301.* See also 5 C.F.R. § 338.101 (1984). In overseas areas, however, persons who are not citizens of the United States may be recruited and employed by the Federal Government. Id. § 8.3. Pending termination of the trusteeship, when citizens of the Northern Mariana Islands become citizens of the United States, this provision allows employment of citizens of the Northern Mariana Islands in federal civil service positions in the Northern Mariana Islands (and in other overseas areas, including Guam). The provision also allows the Federal Government to employ in the Northern Mariana Islands individuals who are citizens of neither the United States nor the Northern Mariana Islands.

Prohibiting persons who are not United States citizens from working for the federal civil service most affects those citizens of the Northern Mariana Islands who want to work for the Federal Government in the United States proper. Other provisions in part III of title 5 allow only citizens of the United States to receive a

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*The constitutionality of this executive order was upheld in Vergara v. Hampton, 581 F.2d 1281 (7th Cir. 1978), certiorari denied, 441 U.S. 905 (1979).

variety of federal employment benefits. These provisions have already been discussed in the Commission's January 1982 interim report to the United States Congress.* In its interim report, the Commission recommended enactment of legislation to treat citizens of the Northern Mariana Islands as citizens of the United States for purposes of these requirements. In 1983 Congress enacted Public Law 98-213, 97 Stat. 1459. Sections 19 to 23 of that statute allow the President by proclamation to declare that citizenship requirements in particular federal laws are not applicable to citizens of the Northern Mariana Islands. In 1984 the President removed for citizens of the Northern Mariana Islands the citizenship restrictions in these sections. Presidential Proclamation 5207, § 2(a), 49 Fed. Reg. 24365.

The prohibitions of political activities apply to all federal workers, including those in the territories. See, for example, Soldevila v. Secretary of Agriculture of the United States, 512 F.2d 427 (1st Cir. 1975) (Puerto Rico). Since Guam is a territory, by operation of section 502(a)(2) of the Covenant, those prohibitions also apply to federal workers in the Northern Mariana Islands.

[TITLE 6. SURETY BONDS.]

This title was repealed in its entirety in 1982. Public Law 97-258, § 5(b), 96 Stat. 877, 31 U.S.C. App. Federal laws on surety bonds are now found in chapter 93 (§§ 9301 et seq.) of title 31 of the United States Code.

TITLE 7. AGRICULTURE.

The statutes.

Agriculture has always been one of the most important economic activities in the United States. Although the United States has shifted from an agricultural to an industrial economy, that shift is due in large part to the phenomenal productivity of American agriculture. The farming sector not only feeds the people of the United States well; it enables the United States to be the world's leading exporter of foodstuffs.

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*Several of the more important provisions require employees to be United States citizens to receive civil service annual and sick leave benefits, 5 U.S.C. § 6301; to have certain collective bargaining and labor rights, id. § 7103; to be eligible for civil service unemployment benefits, id. § 8501; and to participate in federal employee life and health insurance plans, id. §§ 8701, 8901.

The Federal Government, principally through the Department of Agriculture, plays an important role in American agriculture.

> The Department of Agriculture (USDA) . . . works to improve and maintain farm income and to develop and expand markets abroad for agricultural products. The Department helps to curb and to cure poverty, hunger, and malnutrition. It works to enhance the environment and to maintain our production capacity by helping landowners protect the soil, water, forests, and other natural resources. Rural development, credit, and conservation programs are key resources for carrying out national growth policies. USDA research findings directly or indirectly benefit all Americans. The Department, through inspection and grading services, safeguards and assures standards of quality in the daily food supply.

U.S. Government Manual 94 (1982).

The Federal Government "support[s] farm incomes through direct payments to farmers, controls on output, price supports, and the provision of storage and marketing facilities." 18 Encyclopaedia Britannica Macropaedia, United States of America 905, 935 (15th ed. 1980).*

Present applicability.

Some chapters of the title 7 are now applicable to the Northern Mariana Islands while others are not.

In 1980 the United States Congress enacted Public Law 96-597, 94 Stat. 3477. Section 601(c) of that law, now codified as section 1469d(c) of title 48 of the United States Code, authorizes the Secretary of Agriculture "to extend, in his discretion, programs administered by the Department of Agriculture to Guam, the Northern Mariana Islands, the Trust Territory of the Pacific Islands, the Virgin Islands, and American Samoa" and "to waive or modify any statutory requirements relating to the provision of assistance under such programs when he deems it necessary in order to adapt the programs to the needs of the respective territory . . . ." The administration of any program extended to a territory must be governed by a memorandum of understanding between the territorial government and the Department of Agriculture.

Public Law 96-597 thus permits the extension of any Department of Agriculture program to the Northern Mariana Islands without

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*Other federal laws affecting agriculture are found in title 16, Conservation, and title 21, Food and Drugs.

further action by the United States Congress. (Prior notice of extension of a federal agricultural program to a territory, and of any waiver or modification of program requirements for a territory, must be given to congressional committees that oversee agriculture and the territories. 48 U.S.C. § 1469d(c).)

Discussion.

> In the years between World Wars I and II agriculture was the mainstay of the Northern Marianas' economy. By 1937, a reported 36,900 acres, or nearly one third of a total land area of 116,400 acres, were under cultivation producing sugar cane, vegetables, fruits, coffee, and other crops. Vegetable production amounted to nearly 19,900 tons and fruit production to more than 460 tons in that year. Farm livestock included 24,100 swine and 14,600 cattle. Japanese-run commercial farms, as well as smaller family units integrating crop and animal production (often operated by Okinawan or Korean settlers), accounted for much of the agricultural activity.
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> Even though many families in the Northern Marianas continue to maintain small farms featuring an acre of tree crops (fruits and coconut), vegetable gardens and a few small livestock (chickens, goats, pigs) to supplement family income, agriculture has become an economic activity of only secondary importance. A total of only about 600 acres are now under cultivation in the CNMI, and no more than 22,500 acres are in grazing. Livestock consist of approximately 2,500 swine and 7,300 cattle, most accounted for by the 7,000-acre Bar K Ranch in Tinian, owned by the Micronesian Development Corporation of Guam. There are probably fewer than 75 full time commercial farmers or ranchers throughout the Commonwealth, including individuals employed as farm laborers.

Robert R. Nathan Associates, Inc., Assessment of Current and Prospective Socio-economic Conditions in the Commonwealth of the Northern Mariana Islands 12 (1980).

> Sales of crops grown in the Commonwealth amounted to about 822,800 pounds in FY 1982, of which vegetables accounted for 763,800 pounds, fruits for 38,100 pounds, and staple crops for 20,900 pounds. Cucumbers, watermelons, and other melons make up the bulk of this volume. Local buyers are hotels and retail stores. Military facilities and retail stores in Guam are buyers of CNMI export products. It is estimated that recorded commercial sales currently represent about 80% of total crop production in the Commonwealth.

In FY 1982 total commercial sales of vegetables, fruits, and staple crops represented only 40 percent of the 1,940,000 pounds of these same commodities marketed in FY 1977, and about 38% of the 2,047,000 pounds of these commodities marketed in FY 1973. Much of this decline results from a precipitous drop in export sales to Guam, the CNMI's only export market, amounting to a million pounds or more.

Sales levels for animal products have also been variable. Sales of meat, primarily beef, stood at 300,000 pounds in FY 1982, but have fluctuated between 200,000 pounds and 450,000 pounds over the past seven years. Milk production reached a level of over 92,000 gallons in FY 1982, roughly six years after the establishment of a dairy herd on Tinian in FY 1976. All milk and almost all recorded meat sales are generated by the Micronesian Development Corporation's Bar K Ranch on Tinian, and the major portion of this production (milk, 81%; meat, 92%) is currently exported to Guam.

Commonwealth of the Northern Mariana Islands, Overall Economic Development Strategy 20-21 (1983).

Much of the food now consumed in the Northern Mariana Islands is imported. Consequently, the Northern Mariana Islands itself provides a market for increased agricultural production. In addition, the Northern Mariana Islands is well-situated to provide tropical agricultural products to population centers in Japan and other far eastern countries. (Trade barriers in Japan, however, severely restrict the importation of agricultural products to that nation.) The record of agricultural production in the Northern Mariana Islands during the Japanese administration of the islands is ample evidence of the potential role of agriculture in the economic development of the Northern Mariana Islands.

The Commission's recommendation, Land-grant colleges, in the Recommendations section of this report, discusses chapters 13, 14, and 64 of title 7. Chapters 1, 2, 3, 4, 6,* 7, 7A, 7B, 8, 8A, 9, 10, 11, and 12 of title 7 are discussed below. The Commission's staff examined the remaining chapters in title 7, but did not compile and edit its research for inclusion in this report. No significant problems in the application of these chapters to the Northern Mariana Islands were uncovered by the staff's research or otherwise brought to the Commission's attention.

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*Chapter 5 of title 7 has been repealed.

Chapter 1. Commodity Exchanges.

The statutes.

"Commodities," as the term is used in this chapter, include a wide variety of agricultural products, such as wheat, rice, eggs, corn, livestock, peanuts, soybeans, and cotton. See 7 U.S.C. § 2. Dealers in commodities commonly bargain to deliver a given quantity of a particular commodity at a specified price on a fixed date in the future. These arrangements, or "futures contracts," are traded at commodity exchanges much as stocks are traded at stock exchanges.

This chapter regulates commodity trading and the commodities exchanges, largely by means of the Commodity Futures Trading Commission (CFTC).

> The Commission's regulatory and enforcement efforts are designed to ensure that the futures trading process is fair and that it protects both the rights of customers and the financial integrity of the marketplace. The CFTC approves the rules under which an exchange proposes to operate and monitors exchange enforcement of those rules. It reviews companies and individuals who handle customer funds or give trading advice. The Commission also protects the public by enforcing rules that require that customer funds be kept in bank accounts separate from accounts maintained by firms for their own use, and that such customer accounts be marked to present market value at the close of trading each day.

U.S. Government Manual 464 (1982).*

Present applicability.

The practices and transactions regulated by this chapter are generally defined by reference to their effects on interstate commerce. See, for example, 7 U.S.C. §§ 6a, 6b, 6c, 6h, 6m, 6o, 9, 13b. "Interstate commerce" is defined to include commerce within any Territory or possession or between any Territory or possession and any place outside of that Territory or possession. Id. § 2. Since Guam is a Territory or possession of the United States, by operation of section 502(a)(2) of the Covenant, commerce within the Northern Mariana Islands or between the Northern Mariana Islands and any other place is interstate commerce subject to this chapter. Accordingly,

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*The Commission's jurisdiction extends as well to futures trading in nonagricultural commodities, such as precious metals and foreign currencies. Id.

transactions in commodities futures in the Northern Mariana Islands must meet the requirements of this chapter and are subject to regulation by the Commodity Futures Trading Commission.

Chapter 2. Cotton Standards.

and

Chapter 3. Grain Standards.

The statutes.

These two chapters authorize the Secretary of Agriculture to establish official quality and weight standards for cotton and grains and to administer a system of inspection and weighing to standardize classifications and insure quality. The Agriculture Marketing Service within the Department of Agriculture is charged with these functions.

Present applicability.

Only cotton produced in the continental United States is subject to the standards established by chapter 2. 7 U.S.C. § 62. The Northern Mariana Islands, of course, is not within the continental United States. In any case, no cotton is grown in the Northern Mariana Islands.

"United States" and "State" are defined, for purposes of chapter 3, regulating grains, to include the territories and possessions of the United States. Id. § 75(d),(e). Guam is a territory or possession. Accordingly, by operation of section 502(a)(2) of the Covenant, the Northern Mariana Islands is a "State" for purposes of chapter 3, and grains shipped to or from the Northern Mariana Islands must comply with the requirements of the chapter.

Chapter 4. Naval Stores.

The statutes.

This chapter authorizes the Secretary of Agriculture to set standards for spirits of turpentine and rosins and to classify and grade those "naval stores." Naval stores sold in commerce must be designated by reference to those standards.

Present applicability.

"Commerce" is defined, for purposes of this chapter to include commerce between States, Territories, or possessions and any place outside thereof as well as within Territories or possessions. 7 U.S.C. § 92(l). Guam is a Territory or possession, so the chapter is

applicable to Guam and the several States. Under section 502(a)(2) of the Covenant, laws applicable to Guam and the several States apply to the Northern Mariana Islands as they do to the several States. Accordingly, "commerce" for purposes of this chapter includes commerce between the Northern Mariana Islands and any place outside of the Northern Mariana Islands, but does not include commerce totally within the Northern Mariana Islands. Consequently, spirits of turpentine and rosins brought into the Northern Mariana Islands from other places and sold there must comply with the standards established by this chapter.

Chapter 6. Insecticides and Environmental Pesticide Control.

The statutes.

This chapter is the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended. FIFRA requires the registration of pesticides (the generic term for insecticides, fungicides, and rodenticides) by the Environmental Protection Agency. 7 U.S.C. § 136a. Applicators of certain pesticides must be certified, and producers and sellers of pesticides must keep specified records. Id. §§ 136b et seq. (Applicators may be certified by State governments pursuant to programs approved by the Environmental Protection Agency. Id. § 136b(a)(2).) If the prescribed procedures are not followed, pesticides may be seized by the Environmental Protection Agency. Id. § 136k.

Present applicability.

The requirements of the Act apply to pesticides in any State. See, for example, 7 U.S.C. §§ 136a(a), 136b(a), 136e(a). "State" is defined, for purposes of this chapter, to include Guam and the Trust Territory of the Pacific Islands. Id. § 136(aa). See also Pacific Construction Co. v. Branch, 428 F. Supp. 727, 728 (D. Guam 1976). Accordingly, by operation of section 502(a)(2) of the Covenant, the requirements of the chapter are applicable to the Northern Mariana Islands.

Chapter 7. Insect Pests Generally.

The statutes.

This chapter authorizes the Secretary of Agriculture, independently or in cooperation with State agencies and countries in the Western Hemisphere, to carry out measures to "detect, eradicate, suppress, control, or to prevent or retard the spread of plant pests." The Secretary is also authorized to provide for inspection of plants or plant products being exported from the United States and

to certify those plants and plant products as free from plant pests. 7 U.S.C. § 147a(e).

Present applicability.

"State" is defined, for purposes of this chapter, to include the territories and possessions of the United States. 7 U.S.C. § 147a(d)(3). Since Guam is a territory or possession, by operation of section 502(a)(2) of the Covenant, the Northern Mariana Islands is a "State" for purposes of this chapter. Accordingly, the Secretary of Agriculture, independently or in cooperation with Northern Mariana Islands authorities, may act against plant pests in the Northern Mariana Islands and may certify plants or plant products exported from the Northern Mariana Islands as free from plant pests.

Discussion.

One reason for enactment of Public Law 96-597, giving the Secretary of Agriculture discretion to apply agricultural programs to the Northern Mariana Islands that might otherwise not apply, was concern about melon fly infestation. See Staff of Subcommittee on Public Lands and National Parks of the House Committee on Interior and Insular Affairs, 98th Cong., 1st Sess., The Trust Territory of the Pacific Islands: An Analysis of Crucial Issues 60 (Comm. Print No. 3, 1983).

Chapter 7A. Golden Nematode.

The statutes.

This chapter grants authority to the Secretary of Agriculture to act against the golden nematode, a pest that harms potatoes and tomatoes. If necessary, crops may be inspected and quarantined. 7 U.S.C. § 150b. Planting restrictions and destruction of crops may take place if authorized by State law. Id. § 150d.

Present applicability.

Chapter 7A offers no guidance as to its applicability to the Northern Mariana Islands. Quarantine regulations promulgated by the Animal and Plant Health Inspection Service of the United States Department of Agriculture to enforce the chapter prohibit the movement of plants and other materials that may contain golden nematodes from any quarantined State into or through any other State. 7 C.F.R. §§ 301.85(b), 301.85-1(i) (1985). "State" is defined to include "any State, territory, or district of the United States." Id. § 301.85-2(u). Guam is a territory of the United States. 48 U.S.C. § 1421a. Accordingly, by operation of section 502(a)(2) of the Covenant, the Secretary of Agriculture's authority to control golden nematodes extends to the Northern Mariana Islands.

Chapter 7B. Plant Pests.

The statutes.

This chapter prohibits the movement of plant pests into the United States or "interstate" within the United States. 7 U.S.C. § 150bb. The Secretary of Agriculture is authorized to issue regulations controlling the movement of "products and articles of any character" that may contain plant pests. Id. § 150ee. Department of Agriculture employees are authorized to inspect persons and vehicles travelling into the United States or interstate without first obtaining a search warrant and to seize products or articles containing plant pests. Id. § 150ff.

Present applicability.

"United States" is defined for purposes of this chapter to include "Territories" and "possessions." 7 U.S.C. § 150aa(e). "Interstate" is defined to include movement to and from "Territories" or "possessions." Id. § 150aa(f). Guam is a Territory or possession. Accordingly, by operation of section 502(a)(2) of the Covenant, the prohibitions and restrictions of this chapter apply to plant pests and products or articles that may contain plant pests moving in or out of the Northern Mariana Islands.

Chapter 8. Nursery Stock and Other Plants and Plant Products.

The statutes.

This chapter, known as the Nursery Stock Quarantine Act and also as the Plant Quarantine Act, forbids importation of nursery stock (plants, seeds, bulbs, cuttings, and similar items) into the United States except by permit. 7 U.S.C. § 154. Nursery stock imported or shipped interstate must meet certain labelling requirements. Id. § 157. The Secretary of Agriculture may restrict importation into the United States of other plants and plant materials in order to keep out plant diseases and pests. Id. §§ 156-159.

Present applicability.

"United States" is not defined in chapter 8, but the chapter is clearly intended to apply to "Territories" of the United States. See 7 U.S.C. §§ 156, 158, 159, 161, 163. Regulations of the Department of Agriculture for enforcement of this chapter and other laws define "United States" to include the Northern Mariana Islands. 7 C.F.R. §§ 318.13-1(o) (1985). See also 7 C.F.R. § 352.1(b)(31)(1985), defining "United States" to include the several States and Guam. Under these administrative definitions, the chapter--directly and by virtue of section 502(a)(2) of the Covenant--applies in the Northern Mariana Islands.

The Animal and Plant Health Inspection Service of the Department of Agriculture has implemented this chapter, the Federal Plant Pest Act, and other legislation in combined regulations. See 7 C.F.R. parts 300 et seq. (1985). Of particular interest among these regulations are sections 318.82 et seq., governing the movement of plants and plant materials from Guam to other parts of the United States. (Note, however, that under section 502(a)(2) of the Covenant, the Northern Mariana Islands is to be treated not like Guam, but like the States of the Union.)

Section 319.37-2 of title 7, C.F.R. (1985), promulgated under the authority of the same legislation, prohibits importation into the United States of a wide variety of plants and plant products (subject to certain exceptions). "United States" is defined, for purposes of section 319.37-2, specifically to include the Northern Mariana Islands. 7 C.F.R. § 319.37-1 (1985). Among the plant articles prohibited are all parts except seeds from all species of the genus Areca, which includes the betel nut palm. Betel nut is commonly imported to the Northern Mariana Islands from the Yap and Palau Islands. Since, however, only the seed of the betel nut is imported, the prohibition does not affect the importation of betel nut into the Northern Mariana Islands.

Coconuts for planting purposes may only be imported into the United States (including the Northern Mariana Islands) after issuance of a federal permit. Id. § 319.37-3(a)(4).

Chapter 8A. Rubber.

The statutes.

This chapter, originally enacted in 1942 as a wartime measure, authorizes the Secretary of Agriculture to investigate the possibility of producing rubber from guayule and other plants in order to reduce national dependence on latex rubber. 7 U.S.C. §§ 171, 178.

Present applicability.

The focus of this chapter is on development of alternative sources of rubber in North America or the Western Hemisphere. 7 U.S.C. §§ 171(2), 171(3), 171(8), 178a(d). Grants may be made to States to further the purposes of the chapter. Id. §§ 178g(a), 178h(a). "State" is defined to include only the fifty States, the District of Columbia, and Puerto Rico. Id. § 178a(a). Thus, the government of the Northern Mariana Islands is not eligible to receive grants under the chapter (unless the Secretary of Agriculture exercises his or her authority, under 601(c) of Public Law 96-597, 94 Stat. 3477 (1980), to make those grants available to the Northern Mariana Islands). Nothing in the chapter, however, prohibits federal

sponsorship of other activities furthering the purposes of the chapter from being undertaken within the Northern Mariana Islands.

Chapter 9. Packers and Stockyards.

The statutes.

This chapter regulates the business practices of packers, stockyard owners and dealers, and poultry handlers and dealers to protect the public from unfair, discriminatory, or deceptive practices.

Present applicability.

Packers, stockyards, and poultry handlers and dealers moving agricultural products "in commerce" are subject to the provisions of this chapter. "Commerce" is defined to include commerce between States, Territories, or possessions and any place outside thereof as well as within Territories or possessions. 7 U.S.C. §§ 182(6), 183. Guam is a Territory or possession, so the chapter is applicable to Guam and the several States. Under section 502(a)(2) of the Covenant, laws applicable to Guam and the several States apply to the Northern Mariana Islands as they do to the several States. Accordingly, "commerce" for purposes of this chapter includes commerce between the Northern Mariana Islands and any place outside of the Northern Mariana Islands, but does not include commerce totally within the Northern Mariana Islands. Consequently, packers, stockyards, and poultry handlers and dealers moving agricultural products in or out of the Northern Mariana Islands are subject to this chapter. Packers, stockyards, and poultry handlers and dealers in the Northern Mariana Islands whose agricultural products are produced or raised and consumed solely within the Northern Mariana Islands are not subject to the chapter.

Chapter 10. Warehouses.

The statutes.

This chapter authorizes the licensing and regulation of bonded warehouses for the storage of agricultural products and requires inspection and grading of products stored in bonded warehouses in accordance with quality and value standards established by the Secretary of Agriculture. The chapter does not require that agricultural products be stored only in bonded warehouses.

On delivery of goods to a bonded warehouse, the owner of the goods is given a receipt by the warehouse operator. 7 U.S.C. § 259. The warehouse receipt can then be transferred to another person, who by the transfer takes title to or a security interest in the products in the warehouse. 78 Am. Jur. 2d, Warehouses § 53 (1975). The

original owner of the goods receives cash or credit in return for the transfer of the receipt. The warehouse receipt thus provides the agricultural producer a means of quickly turning his or her products into purchasing power. Receipts from a licensed, bonded warehouse are more acceptable than receipts from warehouses that are not licensed and bonded.

Present applicability.

Warehouses eligible for licensing under this chapter include any warehouse "in which any agricultural product is or may be stored for interstate or foreign commerce, or, if located within any place under the exclusive jurisdiction of the United States, in which any agricultural product is or may be stored." 7 U.S.C. § 242. Guam is within the exclusive jurisdiction of the United States. Accordingly, warehouses in Guam as well as in the several States may be licensed pursuant to this chapter. Under section 502(a)(2) of the Covenant, warehouses in the Northern Mariana Islands may also be licensed, but only those warehouses that if located in one of the States could be licensed. Consequently, only those warehouses in the Northern Mariana Islands in which agricultural products are or may be stored for interstate or foreign commerce are eligible for licensing as bonded warehouses.

Chapter 11. Honeybees.

The statutes.

This chapter prohibits (with some exceptions) the importation into the United States of honeybees and honeybee semen, in order to protect the United States honeybee population from diseases and parasites and to protect the genetic integrity of that population. See 7 U.S.C. § 281.

Present applicability.

The territorial extent of the United States for purposes of this law is not defined. Department of Agriculture regulations implementing the law, however, define "United States" to include the several States and Guam. 7 C.F.R. § 322.6 (1985). Under this administrative definition, the prohibitions against honeybee imports, by virtue of section 502(a)(2) of the Covenant, control imports into the Northern Mariana Islands as well.

Chapter 12. Associations of Agricultural Products Producers.

The statutes.

This chapter allows persons engaged in the production of agricultural products to form cooperative associations for

processing, handling, and marketing agricultural goods without violating the antitrust laws. The Secretary of Agriculture is to ensure that monopolization, restraint of trade, or price fixing do not occur. See 7 U.S.C. §§ 291, 292.

Present applicability.

Although this chapter does not specify its applicability to the Northern Mariana Islands, the chapter is applicable there. The antitrust laws apply wherever the powers of Congress reach. United States v. Standard Oil Co., 404 U.S. 558 (1972). Congress has the power to make federal laws applicable to the Northern Mariana Islands, so the antitrust laws are applicable to the Northern Mariana Islands. This chapter, since it grants exemptions from the antitrust laws, must be construed to extend wherever those laws extend. 2A Sutherland, Statutes and Statutory Construction § 51.02 (4th ed. Sands 1973). Accordingly, farmers' cooperatives in the Northern Mariana Islands are entitled to the qualified immunity from the antitrust laws granted by this chapter.

Chapter 13. Agricultural and Mechanical Colleges.

and

Chapter 14. Agricultural and Experiment Stations.

and

Chapter 64. Agricultural Research, Extension, and Teaching.

Note. Chapters 13, 14, and 64 of title 7 are discussed in the Commission's recommendation, Land grant colleges, in the Recommendations section of this report.

TITLE 8. ALIENS AND NATIONALITY.

Note. The provisions of chapters 1 through 11 of this title have been repealed, omitted as obsolete, or transferred to other parts of the Code.

In addition to the discussion of title 8, below, see the Commission's recommendations, Residency requirement for naturalization of citizens of the Northern Mariana Islands who become nationals of the United States on termination of the trusteeship and Permanent resident status in the United States for aliens who are immediate relatives of citizens of the Northern Mariana Islands. Also related to the discussion below is the Commission's recommendation, Creation of a special passport for citizens of the Northern Mariana Islands. All three recommendations are in the Recommendations section of this report.

Late in the Commission's life, two questions related to title 8 were brought to the Commission's attention. The Commission did not have sufficient time or resources to examine these questions carefully. Accordingly, no recommendations are made with respect to those questions in this report.

The first question is whether legislation should be enacted addressing the status of persons who are entitled to permanent residency in the Northern Mariana Islands but who will not, on termination of the trusteeship, be entitled (like other residents of the Northern Mariana Islands) to United States citizenship or nationality. The number of such persons is not certain, but may be as high as two or three hundred.

The second question is whether legislation should be enacted to preserve the control granted the Northern Mariana Islands over its own immigration law by section 503(a) of the Covenant. Such legislation is necessary, it has been argued, to prevent United States discrimination, by quotas or otherwise, against products of the Northern Mariana Islands because of the participation of foreign workers in the manufacture of those products.

The statutes.

The immigration laws. The power to control the entry of aliens into its territory is fundamental to a nation's sovereignty. The immigration laws of the United States specify the categories of aliens that may enter the United States, the procedures for determining which aliens within each category may enter, the documents each alien must obtain prior to entry, and the length of time each alien will be permitted to remain within the United States. The immigration laws also contain provisions for the exclusion or deportation of aliens not meeting requirements for entering or remaining in the United States.

Aliens entering the United States are classified, first, as immigrants or nonimmigrants. Nonimmigrants are aliens who enter the United States only temporarily, without any intention of permanently leaving their native country. Tourists, diplomats, and students are among those admitted into the United States as nonimmigrants. 8 U.S.C. § 1101(15). Immigrants, by contrast, are aliens who intend to reside permanently in the United States.

Under present law, no more than 270,000 immigrants from all parts of the world may enter the United States each year. 8 U.S.C. § 1151(a). No more than 20,000 immigrants from any particular country (and no more than 600 from a particular colony or dependency of a foreign nation) may be admitted in any given year. Id. § 1152.

Not subject to these numerical limitations are immigrants who are immediate relatives of a United States citizen, and certain

refugees and special immigrants. Id. § 1151. "Immediate relatives" are defined to include only the children and spouse of the citizen and, if the citizen is at least twenty-one years of age, his or her parents. Id. § 1151(b).

The immigration laws allow other immigrant aliens to enter the United States, subject to the numerical quotas, based on a hierarchy of preferences. The preferences are based on two principal policy goals: the reunification of families and the attraction of persons with needed skills. Id. § 1153. Only when all persons meeting the requirements for a higher preference have been granted visas allowing entry into the United States are persons meeting the requirements of a lower preference given visas, if the applicable numerical limits have not been reached.

The nationality laws. The Fourteenth Amendment to the United States Constitution establishes that all persons born or naturalized in the United States, and subject to the jurisdiction of the United States, are citizens of the United States.* The nationality laws give substance to the constitutional provision by specifying which persons are born in the United States and subject to its jurisdiction. Those laws now provide, in general, that persons born in the fifty States of the Union, the District of Columbia, Puerto Rico, the Virgin Islands, and Guam are born in the United States and are thus citizens of the United States. 8 U.S.C. §§ 1101(38), 1401, 1402, 1404, 1406-1407. Persons born in American Samoa are generally nationals, but not citizens, of the United States.** Id. §§ 1101(a)(29), 1408. Persons born in the Trust Territory of the Pacific Islands are generally neither citizens nor nationals of the United States.

The nationality laws also set forth the procedure for naturalization of an alien as a citizen of the United States. Fundamental prerequisites to naturalization for most aliens are legal admission into the United States, residency of at least five (or, in the case of the spouse of a United States citizen, three) years in the United States, and an understanding of the English language and

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*Not "subject to the jurisdiction of the United States" are the children of foreign diplomats and the children--should the case ever arise--of alien enemies in hostile occupation of some part of the United States.

**The distinction between "citizens" and "nationals" of the United States is not well-defined. Nationals--like citizens--owe allegiance to the United States and are entitled to its protection, but do not qualify for some rights and privileges granted by statute only to citizens.

of the history and government of the United States. 8 U.S.C. §§ 1423, 1427, 1430.

Present applicability.

The Covenant addresses the applicability of the immigration and naturalization laws of the United States to the Northern Mariana Islands in some detail.* Citizens of the Northern Mariana Islands, on termination of the trusteeship, will become citizens of the United States.** Covenant §§ 301, 1003(c). With certain specified exceptions, however, the immigration and naturalization laws of the United States do not apply to the Northern Mariana Islands. Id. §§ 503(a), 1003(a). Subject to the exceptions, the Northern Mariana Islands for all practical purposes may be considered as outside the United States for purposes of the immigration and naturalization laws.

The exceptions to the general rule of inapplicability are set out in section 506 of the Covenant. That section, however, does not become effective until termination of the trusteeship. Covenant § 1003(c). Until termination of the trusteeship, the federal immigration and naturalization laws are entirely inapplicable to the Northern Mariana Islands.

On termination of the trusteeship, the Northern Mariana Islands will be subject to certain provisions of the Immigration and Nationality Act. Under section 303 of the Covenant, persons born in the Northern Mariana Islands (and subject to the jurisdiction of the United States) after termination of the trusteeship will be citizens of the United States at birth. Section 506(b) of the Covenant makes the Northern Mariana Islands part of the United States for purposes

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*The Covenant refers to the "immigration and naturalization laws" and to the "Immigration and Nationality Act." Covenant §§ 503(a), 506(a). The Immigration and Nationality Act is administered largely by the Immigration and Naturalization Service. Although provisions for naturalization are but one aspect of the nationality laws, the "immigration and naturalization laws" and the Immigration and Nationality Act, as amended from time to time, are identical.

**Within the following six months, however, any such person may elect to become a national, rather than a citizen, of the United States by making a prescribed declaration under oath. Covenant § 302.

of provisions in the Immigration and Nationality Act that specify which persons born outside the United States are United States citizens. Under those provisions, a child born, say, in Japan to parents, one of whom is a Japanese citizen and the other of whom is a United States citizen, will be a citizen of the United States at birth if the United States citizen parent has spent at least ten years in the United States prior to the child's birth. If the Northern Mariana Islands were not considered a part of the United States for purposes of these provisions, the child would not be a citizen of the United States if the United States citizen parent had resided in the Northern Mariana Islands rather than in some other part of the United States for the requisite period of time.

Section 506(c) of the Covenant allows immediate relatives of United States citizens* lawfully admitted to permanent residence in the Northern Mariana Islands at the termination of the trusteeship to be presumed admitted as lawful permanent residents of the United States without the necessity of complying with the usual procedures for admission under the Immigration and Nationality Act. The immediate relative may subsequently seek naturalization as a United States citizen pursuant to the provisions of that Act (which otherwise, as noted above, is generally not applicable to the Northern Mariana Islands).

Immediate relatives of United States citizens residing in the Northern Mariana Islands who do not become residents of the Northern Mariana Islands before termination of the trusteeship may become residents of the Northern Mariana Islands under the laws of the Northern Mariana Islands. If, however, an immediate relative desires ultimately to become a citizen of the United States, he or she must make a formal claim of immediate relative status under federal law** and follow the procedures established by the federal naturalization laws. Covenant § 506(c). See also Marianas Political Status

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*As noted earlier, immediate relatives are defined to include only the children and spouse of the United States citizen and, if the citizen is at least twenty-one years of age, his or her parents. 8 U.S.C. § 1151(b).

**In fact, the alien's United States citizen relative files the petition for classification of the alien as an immediate relative. 8 U.S.C. § 1154(a).

Commission, Section by Section Analysis of the Covenant 63-65 (1975).*

Section 506(c) also assures that the time immediate relatives reside in the Northern Mariana Islands after termination of the trusteeship will count toward satisfaction of the residency requirements for naturalization by defining the Northern Mariana Islands as a State for the purposes of those requirements (but only for immediate relatives covered by section 506(c)).

Finally, section 506(c) allows courts of the Northern Mariana Islands and the District Court for the Northern Mariana Islands to naturalize immediate relatives as United States citizens when all requirements for naturalization have been satisfied.

Section 506(d) of the Covenant provides that the loss of nationality provisions of the Immigration and Nationality Act will apply to all persons who became United States citizens or nationals by operation of the Covenant. These laws generally apply to all United States citizens and nationals, whether native-born or naturalized. See 8 U.S.C. §§ 1481 et seq. United States nationality (and citizenship) may be lost by a variety of means, for example, by voting in a foreign election, by serving in the armed forces of a foreign state, or by being naturalized as a citizen of another nation. Id.

Discussion.

Entry of persons into the Northern Mariana Islands--citizens of the United States. Section 501(a) of the Covenant makes applicable to the Northern Mariana Islands section 1 of the Fourteenth Amendment to the Constitution of the United States. Among other things, section 1 prohibits any State--and by virtue of section 501(a) of the Covenant, the Northern Mariana Islands--from making or enforcing "any law which shall abridge the privileges or immunities of citizens of the United States." Among the privileges and immunities of citizens of the United States is the right to travel. Hicklin v. Orbeck, 437 U.S. 518, 524-25 (1978); Ward v. Maryland, 12 Wall. (79 U.S.) 418 (1871). Thus, the Northern Mariana Islands may not (and does not) control the entry of United States citizens into the Northern Mariana Islands.

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*The Analysis is reprinted in Hearings on the Covenant to Establish the Commonwealth of the Northern Mariana Islands before the Subcommittee on Territorial and Insular Affairs of the House Committee on Interior and Insular Affairs, 94th Cong., 1st Sess. (1975), at 626, and in Hearings on the Northern Mariana Islands before the Senate Committee on Interior and Insular Affairs, 94th Cong., 1st Sess. (1975), at 356.

Admission of persons into the Northern Mariana Islands--immigrant aliens. Twenty thousand immigrants per year may enter the United States from any single nation. The Northern Mariana Islands was excluded from the ambit of the federal immigration laws by the Covenant because of fear the islands' small population would be overwhelmed by groups of aliens from neighboring countries entering the United States under United States numerical quotas and settling in the Northern Mariana Islands.

> [A] number of small Asian developing countries [have] close historical ties to the United States and . . . varying levels of political instability--e.g., South Korea, the Philippines, Taiwan and Vietnam. Most already have more or less well-established patterns of out-migration to the United States, with the Philippines and South Korea routinely oversubscribing available visas. Threats of international hostilities, civil war or internal convulsions face many of these countries more or less vividly. If such developments were to occur, strong pressures would arise for admission of large numbers of refugees, as in the recent cases of Vietnam, Cambodia, and Laos. English is a relatively popular second language in most of these countries.

Teitelbaum, Right versus Right: Immigration and Refugee Policy in the United States, 59 Foreign Affairs 21, 28 (1980). Were the Northern Mariana Islands subject to federal immigration laws, a substantial portion of the immigrants from these nations could be expected to settle each year in the Northern Mariana Islands because of its proximity to their home country (and the consequent savings in initial travel costs as well as costs for later visits) and, in some cases, because of its similarity in climate to their home country. In addition, the ability of the federal Immigration and Naturalization Service to prevent the entry of illegal aliens has been much criticized in recent years. See, for example, Immigration Service Has Mammoth Task, Minimal Resources, Wall Street Journal, May 9, 1985, at 1; Select Commission on Immigration and Refugee Policy, U.S. Immigration Policy and the National Interest 46 (1981) (Select Commission Report); Teitelbaum, Right versus Right: Immigration and Refugee Policy in the United States, 59 Foreign Affairs 21, 29-31 (1980); U.S. Comptroller General, Prospects Dim for Effectively Enforcing Immigration Laws (Report GGD-81-4; 1980). The combination of legal and illegal immigration could soon render the indigenous Northern Mariana Islands population a minority in its native islands.

The experience of Hawaii is instructive in this regard. Statistics show the native Hawaiian population is significantly outnumbered in its own homeland: as of 1980 only 19 percent of the Hawaiian population is actually native Hawaiian (and this includes persons who are only part Hawaiian). On every major social

indicator--education, income, employment, and health--the native population is behind other groups residing in the State. Native Hawaiians Study Commission, Report of the Culture, Needs and Concerns of Native Hawaiians 11-13, 38-42, 45-60 (1983).

By contrast, American Samoans remain in control of their island group, largely because they have retained control over immigration.*

The recent report of the Select Commission on Immigration and Refugee Policy generally endorses special treatment for territories and, specifically, for the Northern Mariana Islands in allowing local control of immigration. Select Commission Report 293, 295, 298.

A special problem is presented by immigrants lawfully admitted into the United States as permanent residents. The States of the United States are prohibited by the Constitution from erecting barriers that in one way or another restrict the right of aliens to travel. Thus, States not only are prohibited from denying aliens entry across their borders, but cannot deny those aliens the right to gainful employment. Takahashi v. Fish and Game Commission, 334 U.S. 410 (1948); Traux v. Raich, 239 U.S. 33 (1915); Yick Wo v. Hopkins, 118 U.S. 369 (1886). The constitutional restrictions apply to the States, however, not to the Federal Government. The Federal Government has broad powers over immigration and naturalization, and may restrict the conduct of aliens in ways the States may not. See Mathews v. Diaz, 426 U.S. 67, 73-80 (1976); DeCanas v. Bica, 424 U.S. 351 (1976). In this context, it is important to note that the power of the Northern Mariana Islands to control its own immigration is a power expressly delegated to the Northern Mariana Islands by the Federal Government (by approving the Covenant in a public law).**

The Northern Mariana Islands' control over its own immigration,

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*See title 41 of the American Samoa Code Annotated (1981). The American Samoa Code is promulgated under authority delegated by Congress to the President, 48 U.S.C. § 1661(c); by the President to the Secretary of the Interior, Executive Order 10264 (June 29, 1951); and by the Secretary to the Government of American Samoa, Department of the Interior Order 3009 (1977).

**The immigration boundary between the Northern Mariana Islands and the remainder of the United States is thus sanctioned by Congress. It is therefore distinguishable from the "intermediate border" the Commonwealth of Puerto Rico sought to erect between itself and the United States without the approval of Congress. The United States Supreme Court held that intermediate border an unconstitutional assumption of sovereign authority by Puerto Rico. Torres v. Puerto Rico, 442 U.S. 465 (1979). See also Barusch v. Calvo, 685 F.2d 1199 (9th Cir. 1982); United States v. Chabot, 531 F. Supp. 1063 (D.V.I. 1982).

approved by Congress, is also supported by the general and plenary congressional authority over the territories, derived from Article IV, Section 3, Clause 2, of the Constitution. 2 B. Schwartz, Commentary on the Constitution of the United States 290-91 (1963). Congress may exercise that authority to treat the territories differently from the States of the Union so long as there is a rational basis for its actions. Harris v. Rosario, 446 U.S. 651 (1980) (per curiam).

A principal objective in allowing the Northern Mariana Islands its own immigration laws is to prevent undue concentration of new immigrants to the United States in the Northern Mariana Islands. To the extent immigrants can circumvent Northern Mariana Islands immigration laws by first entering the United States and then proceeding to the Northern Mariana Islands, that objective will be thwarted and the Northern Mariana Islands will be in much the same position as if United States immigration laws applied to the Northern Mariana Islands. There is, consequently, a rational basis for the congressional decision to allow the Northern Mariana Islands to control the entry of aliens into the Northern Mariana Islands, whether or not those aliens have previously been lawfully admitted into the United States.

A special situation is presented by aliens lawfully admitted into the United States as immediate relatives of United States citizens. No recommendation is here made for enactment of federal legislation to allow this category of aliens freely to enter and to reside and be employed in the Northern Mariana Islands. Should the immigration laws of the Northern Mariana Islands not accord such a status to the immediate relatives of United States citizens, federal legislation might become appropriate.

Entry of persons into the Northern Mariana Islands--nonimmigrant aliens. The principal categories of nonimmigrant aliens admitted into the Northern Mariana Islands at the present time are tourists and skilled workers.

Tourism is the major industry of the Northern Mariana Islands. Tourism is promoted if visa and other entry requirements for visitors are as convenient as possible. Convenient entry for tourists is more likely if admission is locally controlled.

Business firms in the Northern Mariana Islands rely upon temporary alien workers to perform services and labor if unemployed persons capable of performing that service or labor are not available locally. These workers are particularly important in the construction industry. The importation and utilization of these workers is controlled by the local law of the Northern Mariana Islands. Were the federal Immigration and Nationality Act made applicable to the Northern Mariana Islands, the importation and

utilization of these workers would be a part of the federal H-2 program.*

The construction industry on Guam, where the Immigration and Nationality Act does apply, has complained that imposition of "adverse effect wage rates" by the United States Department of Labor, raising the wages that must be paid to H-2 workers with the intent of encouraging employment of United States residents, has in fact stifled construction on Guam by raising its cost without increasing employment of United States residents.

The Northern Mariana Islands thus has a strong interest in maintaining local control over the entry of nonimmigrant aliens into the Northern Mariana Islands.

Entry of persons into the United States--citizens of the Northern Mariana Islands. On establishment of constitutional government in the Northern Mariana Islands on January 9, 1978, the United States committed itself to allow citizens of the Northern Mariana Islands freely to enter, reside, and work in the United States.** On termination of the trusteeship, when citizens of the Northern Mariana Islands become citizens (or nationals) of the United States, they will have the constitutional right to enter, reside, and work in the United States. For the period prior to termination of the trusteeship, this Commission has recommended enactment of legislation authorizing the issuance of special United States passports to citizens of the Northern Mariana Islands. Those passports would recite the privilege of citizens of the Northern Mariana Islands to enter and to reside and be employed in the United States. See the recommendation, Creation of a special United States passport for citizens of the Northern Mariana Islands, in the Recommendations section of this report.

Entry of persons into the United States--aliens. Aliens travelling to the United States from the Northern Mariana Islands are subject to the same procedures and controls under the immigration and nationality laws of the United States as are aliens entering the United States from other parts of the world. An alien permitted by the government of the Northern Mariana Islands to enter or to reside in the Northern Mariana Islands has obtained no right to enter or

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*So-called because authorized under section 101(a)(5)(H)(ii) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(5)(H)(ii).

**See cable from F. Potter, U.S. Immigration and Naturalization Service, Washington, D.C., to the Service's field offices (January 4, 1978); Smith v. Pangelinan, 651 F.2d 1320, 1323, 1324-25 (9th Cir. 1981).

reside in other parts of the United States. The alien remains outside the boundaries protected by the federal immigration and nationality laws.

In this report the Commission recommends that an alien who is an immediate relative of a citizen of the Northern Mariana Islands be allowed to enter and to reside and be employed in the United States on the petition of the Northern Mariana Islands relative. See the recommendation, Permanent resident status in the United States for aliens who are immediate relatives of citizens of the Northern Mariana Islands, in the Recommendations section of this report.

Naturalization as a citizen of the United States--aliens. As noted above, the naturalization laws of the United States in general do not apply to the Northern Mariana Islands, and aliens lawfully admitted to reside permanently in the Northern Mariana Islands have no claim either to admission into the United States or to satisfaction of the residency requirements for United States citizenship. Effective on termination of the trusteeship, a few provisions of the naturalization laws will become applicable to the Northern Mariana Islands, again as discussed above.

Only one minor ambiguity appears in connection with the applicability of the naturalization laws to aliens in the Northern Mariana Islands. On termination of the trusteeship, aliens who are immediate relatives of citizens of the United States (including immediate relatives of citizens of the Northern Mariana Islands who at that time become citizens of the United States) and who are lawful permanent residents of the Northern Mariana Islands are presumed admitted as lawful permanent residents of the United States. Covenant § 506(c). Not entirely clear, however, is whether their residency, for purposes of meeting the durational residency requirements for naturalization, is deemed to have commenced on the date of termination of the trusteeship or on the earlier date of their admission to permanent residence in the Northern Mariana Islands.* Section 506(a) of the Covenant provides that the Northern Mariana Islands will be deemed a part of the United States for purposes of section 506(c) only on the effective date of section 506. That effective date is on the termination of the trusteeship. Covenant § 1003(c). Accordingly, for purposes of meeting the durational requirements, residency must be deemed to start on termination of the trusteeship rather than on any earlier date when the alien became a lawful permanent resident of the Northern Mariana Islands. No legislation is here proposed to change the date on which

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*Absent the effect of any provisions of the Covenant, residence in the Trust Territory of the Pacific Islands is not considered residence in the United States for purposes of satisfying the durational requirements for naturalization. In re Reyes, 140 F. Supp. 130 (D. Hawaii 1956).

residency for naturalization purposes commences for this category of aliens.

An alien lawfully admitted into the United States for permanent residence who is not an immediate relative of a United States citizen may not count time spent in the Northern Mariana Islands--assuming the alien has been admitted there by the government of the Northern Mariana Islands--toward satisfaction of the durational residency requirement for naturalization as United States citizen. The Northern Mariana Islands is considered part of the United States for purposes of the durational residency requirement only for those aliens who are immediate relatives of United States citizens. Covenant § 506.

Article I, Section 8, Clause 4, of the United States Constitution requires that the naturalization laws of the United States be "uniform," that is, not varying from place to place within the United States. Only one class of aliens residing in the Northern Mariana Islands--those who are immediate relatives of United States citizens--can seek United States citizenship through naturalization. Various classes of aliens residing in the United States, not only immediate relatives of United States citizens, may seek naturalization. An argument can be made that the constitutional requirement of uniformity is thus violated.

When each State of the United States, under the Articles of Confederation, had its own immigration and naturalization laws, a single State could force all other States to recognize as a citizen any person who met that State's standards for citizenship, even if the person could not meet standards set by other States. The uniform rule of naturalization required by the Constitution ensured that only the Federal Government would have the power to naturalize persons as citizens of the United States. See 3 J. Story, Commentaries on the Constitution of the United States §§ 1098-99 (1833).

The framework set forth in the Covenant does not alter the Federal Government's control over naturalization. The government of the Northern Mariana Islands is not permitted to establish its own requirements for naturalization of persons as United States citizens. Consequently, the constitutional requirement of uniformity is not violated. Further, uniformity requirements in the Constitution apply only to States of the Union and not to areas subject to the territorial powers of Congress under Article IV, Section 3, Clause 2, of the Constitution. Downes v. Bidwell, 182 U.S. 244 (1901). See

Senate Report 94-433, The Covenant to Establish a Commonwealth of the Northern Mariana Islands 79 (1975).*

Naturalization as a citizen of the United States--nationals of the United States. Section 302 of the Covenant allows citizens of the Northern Mariana Islands to elect to become nationals rather than citizens of the United States within six months after termination of the trusteeship. Some of those who decide then to become nationals may subsequently have second thoughts. A national may be naturalized as a citizen of the United States, but to do so the national must first become a resident of one of the fifty States, the District of Columbia, Puerto Rico, Guam, the Virgin Islands, or American Samoa. 8 U.S.C. §§ 1101(29), (38); 1436. The national may not remain a resident of the Northern Mariana Islands if he or she decides to seek naturalization. Legislation is proposed in this report to allow persons electing United States nationality rather than United States citizenship pursuant to section 302 of the Covenant subsequently to seek naturalization without the necessity of leaving the Northern Mariana Islands. See the recommendation, Residency requirement for naturalization of citizens of the Northern Mariana Islands who became nationals of the United States, in the Recommendations section of this report.

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*Subsection (b) of section 501 of the Covenant provides that "the applicability of certain provisions of the Constitution of the United States to the Northern Mariana Islands will be without prejudice to the validity of and the power of the Congress of the United States to consent to [section 506 of the Covenant] . . . ." The report of the Committee on Interior and Insular Affairs of the United States Senate on the Covenant concluded that section 506(b) did not violate the constitutional requirement of uniformity and noted that subsection (b) was inserted "only out of a super-abundance of caution." Id. at 74.

Section 506 of the Covenant was regarded by its negotiators as an integral part "of the mutual compromises and concessions without which the accession of the Northern Mariana Islands to the United States would not have been possible." Report of the Joint Drafting Committee on the Negotiating History of the Covenant, at C-3 (1975), reprinted at Hearings before the Subcommittee on Territorial and Insular Affairs of the House Committee on Interior and Insular Affairs on H.J. Res. 549 et al. to Approve the "Covenant to Establish a Commonwealth of the Northern Mariana Islands," 94th Cong., 1st Sess. 374, 376 (1975).

Acquisition of United States citizenship by persons born in the Northern Mariana Islands of alien parents. In the United States proper, United States citizenship is most often acquired by the fact of birth in the United States, usually regardless of whether a person's parents are United States citizens or aliens. See U.S. Const., Amend. XIV, § 1; 8 U.S.C. § 1401(a)(1). Section 303 of the Covenant provides that all persons born in the Northern Mariana Islands after termination of the trusteeship (and who are subject to the jurisdiction of the United States) will be citizens of the United States at birth. Thus, persons born to alien parents in the Northern Mariana Islands may be citizens of the United States at birth, just as may persons born to alien parents in the United States. As United States citizens, those persons are, of course, free to travel, reside, or work anywhere in the United States.

In controlling the admission of aliens across its own borders, the Northern Mariana Islands thus has an indirect and long-term effect on admissions into the United States. That effect, however, is likely to be of little practical consequence. Present United States law makes no attempt to prevent alien mothers from entering the United States legally and giving birth on United States soil. Further, the constitutional and statutory provisions conferring citizenship on persons born on United States soil make no exception for persons born to alien mothers who are in the United States in violation of the immigration laws. The number of persons born to alien mothers in the Northern Mariana Islands will be negligible by comparison to the number born to alien mothers in the United States. Moreover, alien parents of a person born in the Northern Mariana Islands acquire no immediate rights to enter the United States by reason of their child's United States citizenship. Only twenty-one years later may the child petition for his or her alien parents to be granted the right to permanently reside in the United States as the immediate relatives of a United States citizen. Covenant § 506(c); 8 U.S.C. §§ 1151(b), 1154(a).

Chapter 13. Immigration and Naturalization Service.

The statutes.

This chapter, sections 1551 et seq., of title 8, establishes the Immigration and Naturalization Service within the United States Department of Justice and collects a few miscellaneous statutes pertaining to the operation and administration of the Service.

Present applicability.

Since this chapter is concerned solely with the internal operation of the Immigration and Naturalization Service, the chapter is applicable to the Northern Mariana Islands only to the extent that the actions of the Service affect the Northern Mariana Islands.

TITLE 9. ARBITRATION.

Chapter 1. General Provisions.

and

Chapter 2. Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

The statutes.

Arbitration is the settlement of a dispute between two parties by a person or persons chosen by those parties (or chosen by a method specified by the parties). Arbitration thus serves as a substitute for litigation. Society benefits because the costs of arbitration are borne by the parties to the dispute and congested court dockets are relieved. The parties to arbitration benefit by avoiding the costs and delays of courtroom proceedings and by having an influence on how their disputes are to be settled.

The federal arbitration laws make binding a written agreement to submit disputes to arbitration if that agreement is part of a maritime transaction or a transaction involving commerce (except for certain specified types of employment contracts). 9 U.S.C. §§ 1, 2. Federal courts are required to defer to arbitration proceedings, id. § 3; to compel arbitration if a party fails to submit to arbitration as agreed, id. § 4; to enforce certain arbitral awards, id. §§ 9, 13; and to set aside or modify arbitral awards not properly made, id. §§ 10, 11.

Title 9 also provides for the recognition and enforcement of foreign arbitral awards in federal courts in accordance with the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Id. §§ 201-208.

Present applicability.

Title 9 applies to arbitration clauses "in any maritime transaction or a contract evidencing a transaction involving commerce." 9 U.S.C. § 2. "Commerce" is broadly defined to include commerce "in any Territory of the United States" or between any Territory and any State or foreign nation, the District of Columbia, or any other Territory. "Territory," as used in title 9, has been held to include Guam, so that covered transactions in Guam are subject to the federal arbitration laws. Kanazawa Ltd. v. Sound, Unlimited, 440 F.2d 1239 (9th Cir. 1971). See also Econo-Car International, Inc. v. Antilles Car Rentals, Inc., 499 F.2d 1391 (3d Cir. 1974), holding title 9 applicable in the Virgin Islands. By operation of section 502(a)(2) of the Covenant, title 9 is now applicable in the Northern Mariana Islands.

In adhering to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, the United States declared that the Convention would apply "to all of the territories for the international relations of which the United States . . . is responsible." 21 U.S.T. 2517; T.I.A.S. 6997 (1958). The United States is responsible for the international relations of the Northern Mariana Islands. Trusteeship Agreement, Arts. 3, 8(4), 10, 11(2), 14; Covenant §§ 104, 1003(c). Thus, awards made pursuant to agreements to arbitrate in the Northern Mariana Islands are enforceable in the courts of nations adhering to the Convention and arbitral awards made in those foreign nations are enforceable in the Northern Mariana Islands.

Discussion.

The federal arbitration laws strongly favor enforcement of arbitration agreements. No policy considerations favor exempting the Northern Mariana Islands from these laws. Since the laws are now applicable, the Commission recommends no change in their applicability.

TITLE 10. ARMED FORCES.

Note. See also the recommendation, Nominations to the United States Military Academy, the United States Naval Academy, and the United States Air Force Academy, in the Recommendations section of this report.

The statutes.

Title 10 collects federal law governing the military forces of the United States.* The title is divided into four subtitles: Subtitle A, General Military Law; Subtitle B, Army; Subtitle C, Navy and Marine Corps; and Subtitle D, Air Force. Each of the subtitles contains parts on organization, personnel, training, and procurement.

The Uniform Code of Military Justice is found in chapter 47 of title 10.

Present applicability.

In general, title 10 is not applicable to particular geographic jurisdictions. Rather, it is applicable to the armed forces of the United States, wherever those forces may be based or deployed. Some

*See also title 14, Coast Guard; title 32, National Guard; title 37, Pay and Allowances of the Uniformed Services; title 38, Veterans' Benefits; and title 50, War and National Defense.

provisions in title 10, however, are applicable only to particular persons or particular jurisdictions. The applicability of those provisions to citizens of the Northern Mariana Islands and to the Northern Mariana Islands is discussed below.

Service in the armed forces by citizens of the Northern Mariana Islands. Since 1980 citizens of the Northern Mariana Islands have been able to enlist in the armed forces of the United States. Public Law 96-351, 94 Stat. 1161, 10 U.S.C. § 3253 note.*

In its January 1982 interim report to Congress the Commission recommended enactment of legislation to treat citizens of the Northern Mariana Islands as citizens of the United States for purposes of nineteen different United States citizenship requirements in title 10.** In 1983 Congress enacted Public Law 98-94, 97 Stat. 628. Section 1006 of Public Law 98-94 eliminated, for citizens of the Northern Mariana Islands, three of those citizenship requirements, allowing citizens of the Northern Mariana Islands to participate in the Senior Reserve Officers Training Corps (ROTC) and the armed forces health scholarship program and to become officers in the armed forces. Later in 1983, Congress enacted Public Law 98-213, 97 Stat. 1459. Sections 19 to 23 of that statute allow the President by proclamation to declare that citizenship requirements in particular federal laws are not applicable to citizens of the Northern Mariana Islands. In 1984 the President removed for citizens of the Northern Mariana Islands all but one of the remaining citizenship restrictions in title 10 identified in the Commission's interim report. Presidential Proclamation 5207, §§ 1(a), 3(a), 6(a), 49 Fed. Reg. 24365. The proclamation did not, however, allow citizens of the Northern Mariana Islands to be treated as citizens of the United States for purposes of section 351, authorizing the use of armed vessels to protect the interests of United States citizens and their property or commercial interests from the application of force by a foreign government.***

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*Prior to 1978 a citizen of the Northern Mariana Islands could enlist in the armed forces by declaring an intent to become a citizen of the United States and becoming a lawful permanent resident of the United States. 10 U.S.C. §§ 3253, 8253; Senate Report 96-851, at 1-2 (1980).

**10 U.S.C. §§ 311, 351, 510, 532(a)(1), 591, 1486, 2004, 2031(b)(1), 2104, 2107(b)(1), 2122, 2545(a), 4348, 6019, 6911(a), 6958, 6959, 8257, 9348.

***Article 5(3) of the Trusteeship Agreement recognizes that the United States may take measures for "the local defense" of the Trust Territory. Whether that "local defense" extends to protecting citizens of the Northern Mariana Islands and their property and commercial interests when they are overseas is uncertain.

Title 10 contains a number of other United States citizenship requirements. The Commission made no recommendations with respect to these requirements in its January 1982 interim report to Congress, because none are expected to cause difficulties for citizens of the Northern Mariana Islands before the end of the trusteeship, when they become citizens of the United States and meet those requirements. The other provisions of title 10 with citizenship requirements are:

Militia duty of mariners. Section 312(a)(8) exempts from militia duty mariners in the "sea service" of a citizen of the United States.

ROTC at military junior colleges. Section 2107a(b)(1) requires cadets appointed to the Reserve Officers' Training Corps at certain military junior colleges to be citizens of the United States.

Contracts for aircraft parts. Section 2272 allows only citizens of the United States to receive contracts to furnish certain aircraft parts that have won design competitions for the encouragement of aviation. Section 2279 prohibits aliens employed by those contractors from contact with the plans or specifications of the aircraft part being furnished, or with the part itself, except with the written consent of the Secretary of the military department (for example, the Department of the Air Force) to which the part is being furnished.

Easements across military lands. Sections 2668 and 2669 allow the Secretary of a military department to grant easements across military lands to citizens of any State, Territory, commonwealth, or possession (and, thus, by implication, only to citizens of the United States), among others.

Marksmanship instruction. Section 4308(a)(2) limits to United States citizens eligibility for instruction in marksmanship under the auspices of the Secretary of the Army.

Lease of naval fuel reserves. Section 7435 prohibits foreign citizens from having any interest in a lease of naval fuel reserves if the country of their citizenship denies citizens of the United States the right to lease public lands in that country.

Recaptured vessels. Section 7672 allows naval prize courts to restore recaptured vessels to their foreign owners if the owner's government in similar circumstances would restore a vessel to the ownership of a citizen of the United States.

Gifts of land for air fields. Section 9771 allows the Secretary of the Air Force to accept gifts of land from citizens of the United States for use as aviation fields.

Insurrection. Chapter 15 of title 10, sections 331 et seq., authorizes the President to use the armed forces to suppress an insurrection or other violence within a State in prescribed circumstances. "State" is defined, for purposes of chapter 15, to include Guam. 10 U.S.C. § 335. Accordingly, by operation of section 502(a)(2) of the Covenant, the President may use the armed forces to suppress an insurrection or other violence in the Northern Mariana Islands in the circumstances authorized by chapter 15.

Military cooperation with civilian law enforcement authorities. Chapter 18, sections 371 et seq., of title 10 authorizes the Department of Defense to cooperate with federal, State, and local civilian law enforcement authorities by providing them with information, making available military equipment and facilities, and assigning personnel to operate and maintain equipment made available. (The Posse Comitatus Act, 18 U.S.C. § 1385, prohibits the use of the Army or the Air Force to execute the laws of the United States, except where specifically authorized by law. See generally 32 C.F.R. § 213.10 (1984).)

Whether the Department of Defense may cooperate with civilian enforcement authorities in the territories and possessions of the United States is not specifically stated in chapter 18. References to territories and possessions in the chapter make clear, however, that such cooperation is permitted. Although "possession" is defined to include Guam for purposes of title 10, 10 U.S.C. § 101(3), chapter 18 was enacted after January 9, 1978, the effective date of section 502 of the Covenant. See Covenant § 1003(b). Consequently, chapter 18 is not made applicable to the Northern Mariana Islands by operation of the Covenant, and the Department of Defense is not authorized by this chapter to cooperate with civilian law enforcement authorities in the Northern Mariana Islands.* Further, since the definition of "possession," 10 U.S.C. § 101(3), excludes any "Commonwealth," the chapter will not become applicable to the Northern Mariana Islands on termination of the trusteeship when the Northern Mariana Islands becomes a commonwealth.

Overseas assignment of recruits. Section 671 of title 10 provides that "[n]o member of an armed force may be assigned to active duty on land outside the United States and its Territories

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*Some assistance may be provided, however, under section 1681(b) of title 48 of the United States Code, authorizing "[t]he head of any department . . . of the executive branch of the Government . . ., upon the request of the Secretary of the Interior, [to] extend to the Trust Territory of the Pacific Islands . . . scientific, technical, and other assistance under any program administered by such agency . . . notwithstanding any provision of law under which the Trust Territory may otherwise be ineligible for the assistance . . . ."

and possessions, until he has had twelve weeks of basic training or its equivalent." Guam is a possession of the United States for purposes of title 10. 10 U.S.C. § 101(3). Accordingly, by operation of section 502(a)(2) of the Covenant, members of the armed forces may be assigned to active duty on land in the Northern Mariana Islands before completing twelve weeks of basic training.*

Uniform Code of Military Justice. The Uniform Code of Military Justice applies to all regular members of the armed forces and to a variety of other persons connected in one way or another with the armed forces. 10 U.S.C. § 802. Among those other persons are "persons serving with, employed by, or accompanying the armed forces outside the United States and outside the Canal Zone, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands." Id. § 802(11). Similarly included are "persons within an area leased by or otherwise reserved or acquired for the use of the United States which is under the control of [the armed forces] and which is outside the United States and outside the Canal Zone, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands." Id. § 802(12).

Section 502(a)(2) of the Covenant makes applicable to the Northern Mariana Islands those laws of the United States that are applicable to Guam and the several States. At first glance, these laws subjecting persons who are outside Guam and the several States to the Uniform Code of Military Justice appear inapplicable to Guam and the several States. The same laws may, however, be read as exempting persons in Guam and the several States from these provisions of the Uniform Code of Military Justice, without changing the meaning of the statute. Under that reading, these provisions are applicable to Guam and the several States. Accordingly, by operation of section 502(a)(2) of the Covenant, persons "serving with, employed by, or accompanying the armed forces" in the Northern Mariana Islands and persons "within an area leased by or otherwise reserved or acquired for the use of the United States which is under the control of [the armed forces]" in the Northern Mariana Islands are not subject to the Uniform Code of Miltary Justice. (Those persons, of course, may be subject to the Uniform Code of Military Justice for another reason, for example, membership in the armed forces.)

Rotation of overseas civilian employees of the Department of Defense. Section 1586 of title 10 establishes reemployment rights for civilian employees of the Department of Defense returning from

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*The applicability of section 671 to the several States and Guam is more easily seen if the section is phrased permissively: "A member of an armed force may be assigned to active duty on land in the United States and its Territories and possessions prior to completion of twelve weeks of basic training or its equivalent."

posts of duty outside the United States. "United States" is defined, for purposes of title 10, to include only the several States and the District of Columbia. 10 U.S.C. § 101(1). Accordingly, civilian employees of the department assigned to the Northern Mariana Islands are entitled to reemployment rights on returning to the United States.

Special provision is made for overseas civilian employees of the department who, at the time of employment, were residents of Guam, the Virgin Islands, or Puerto Rico. The Secretary of Defense may, by regulation, allow these employees, on returning from assignments outside the jurisdiction in which they previously resided, to assert reemployment rights within that jurisdiction. Id. § 1586(h). This special provision was enacted after January 9, 1978, the effective date of section 502 of the Covenant. See Covenant § 1003(b). The provision is therefore not made applicable to the Northern Mariana Islands by operation of section 502.* Accordingly, a civilian employee of the Department of Defense residing in the Northern Mariana Islands at the time of employment is not, on returning to the Northern Mariana Islands from duty outside the Northern Mariana Islands, eligible for reemployment rights pursuant to section 1586.

Procurement. The armed forces must generally obtain property and services by formally advertising their needs, inviting competitive bids, and awarding a contract to the lowest responsible bidder. 10 U.S.C. § 2304(a). In a variety of situations, purchases may be made without regard for these requirements. Id. § 2304(a)(1)-(17). One such exception is for the purchase of "property or services to be procured or used outside the United States and the Territories, commonwealths, and possessions." Id. § 2304(a)(6). Guam is a possession of the United States for purposes of title 10. Id. § 101(3). Thus, the advertising and bidding requirements are applicable to the purchase of property or services to be procured or used on Guam. By operation of section 502(a)(2) of the Covenant, those requirements are also applicable to the purchase of property or services to be procured or used in the Northern Mariana Islands.

Post exchanges, commissaries, ships' stores. The Secretary of each of the armed forces is authorized to establish stores at military installations to sell goods to members of the military, and to "such civilian officers and employees of the United States, and

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*Further, given the distinct treatments afforded the residents of Guam and those of the several States, whether the entire statute (10 U.S.C. § 1586) is a law applicable to Guam and of general application to the several States, within the meaning of section 502(a)(2) of the Covenant, is uncertain.

such other persons, as he considers proper." 10 U.S.C. §§ 4621, 7601, 9621. The conditions under which such stores may be established and the persons to whom goods may be sold vary according to whether the store is inside or outside the United States. Inside the United States such stores may be established only if it is impracticable for goods to be obtained from private sources "without impairing the efficient operation of military activities." Id. Further, inside the United States, sales to civilian officers and employees of the United States may only be made to those officers and employees residing within military installations. Id. Neither of these restrictions applies to stores outside the United States. Id.

"United States" is defined for purposes of title 10 to include only the States and the District of Columbia. Id. § 101(1). See also the explanatory notes in the Historical and Revision Notes following 10 U.S.C. §§ 4621, 7610, 9621. Thus, the Northern Mariana Islands is not within the United States for purposes of the restrictions on sale of goods by the armed forces, either directly or by operation of the Covenant. Accordingly, military stores established in the Northern Mariana Islands by the armed forces may be established without regard for whether private enterprise might provide the same goods efficiently. Further, such stores established in the Northern Mariana Islands may be authorized to sell goods to civilian officers and employees of the United States, even though they do not reside within a military installation.

Shipments on military vessels. Section 4747 allows transportation of passengers and certain merchandise to be transported to Guam on military vessels if space is available, at rates prescribed by the Secretary of the Army. Section 4747 provides a federal service to Guam. Accordingly, by operation of section 502(a)(1) of the Covenant, military vessels may carry passengers and certain merchandise to the Northern Mariana Islands if space is available. (Because few military vessels now visit the Northern Mariana Islands, section 4747 is of little immediate importance.)

Transfer of obsolete, condemned, or captured vessels. Section 7308 of title 10 allows the Secretary of the Navy to transfer obsolete, condemned, or captured vessels to, among other jurisdictions, any State, Territory, or possession of the United States. Guam is a possession of the United States for purposes of this title. 10 U.S.C. § 101(3). Accordingly, by operation of section 502(a)(2) of the Covenant, the Secretary of the Navy may also transfer obsolete, condemned, or captured vessels to the Northern Mariana Islands.

Loan or gift of obsolete material and articles of historical interest. Section 7545 of title 10 allows the Secretary of the Navy to lend or give captured, condemned, or obsolete materials and articles of historical interest to, among other entities, any State,

Territory, or possession of the United States. Guam is a possession of the United States for purposes of this title. 10 U.S.C. § 101(3). Accordingly, by operation of section 502(a)(2) of the Covenant, the Secretary of the Navy may lend or give materials to the Northern Mariana Islands pursuant to section 7545.

TITLE 11. BANKRUPTCY.

The statute.

Article I, Section 8, Clause 4, of the United States Constitution gives Congress the power to establish uniform bankruptcy laws throughout the United States. Laws enacted pursuant to this power are "for the benefit and relief of creditors and their debtors in cases in which the latter are unable or unwilling to pay their debts." Black's Law Dictionary 134 (5th ed. 1979). Bankruptcy laws cover both voluntary and involuntary bankruptcy, and provide generally for annulment of the bankrupt's debts in exchange for distribution of most of the bankrupt's property to his or her creditors. The bankrupt gains relief from the burden of debt that, no matter how hard he or she labors, cannot be liquidated. The creditors are each assured a fair share of whatever assets the bankrupt can use to pay the debts. Society in general benefits because the bankrupt's incentive to participate in productive activity is restored and because disputes among creditors seeking first satisfaction from the bankrupt's inadequate assets are minimized.

Title 11 was substantially revised by Public Law 95-598, 92 Stat. 2549, enacted November 6, 1978.

Present applicability.

For the bankruptcy laws to be effectively applicable in the Northern Mariana Islands, two conditions must be satisfied: First, a person residing in the Northern Mariana Islands must be able under the laws to qualify as a debtor eligible for discharge of his or her debts in bankruptcy. Second, a court in the Northern Mariana Islands must be able to administer and enforce the bankruptcy laws.

Ability of persons in the Northern Mariana Islands to qualify as debtors under the federal bankruptcy laws. Section 109 of title 11 provides:

> Notwithstanding any other provision of this section, only a person that resides in the United States, or has a domicile, a place of business, or property in the United States, or a municipality, may be a debtor under this title.

In 1984 Congress enacted the Bankruptcy Amendments and Federal Judgeship Act, Public Law 98-353, 98 Stat. 333. Section 421(j)(7) of Public Law 98-453 amends section 101 of title 11 by adding the following paragraph:

> (49) 'United States', when used in a geographic sense, includes all jurisdictions where the judicial jurisdiction of the United States extends, including territories and possessions of the United States.

The "judicial jurisdiction" of the United States extends to the Northern Mariana Islands. Trusteeship Agreement, Art. 3; Covenant, Art. IV; 48 U.S.C. §§ 1694 et seq.

Since "United States" is defined to include the Northern Mariana Islands, persons in the Northern Mariana Islands may be debtors under the federal bankruptcy laws.

Bankruptcy court jurisdiction in the Northern Mariana Islands. Section 101(a) of Public Law 98-353 (the Bankruptcy Amendments and Federal Judgeship Act, discussed under the preceding heading) amends section 1334(a) of title 28 of the United States Code to give the district courts of the United States "original and exclusive jurisdiction of all cases under title 11," with certain exceptions. Section 1694a(a) of title 48 of the United States Code, as amended by section 902 of Public Law 98-454, provides the "The District Court of the Northern Mariana Islands shall have the jurisdiction of a District Court of the United States, including, but not limited to . . . that of a bankruptcy court of the United States."* Accordingly, the District Court of the Northern Mariana Islands is able to administer and enforce the bankruptcy laws of the United States.

Discussion.

The federal bankruptcy laws should continue to apply in the Northern Mariana Islands.**

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*Section 104(a) of Public Law 98-353 also adds a new section 152 to title 28, United States Code, providing in pertinent part: "The judges of the district courts for the territories shall serve as the bankruptcy judges for such courts."

**This Commission on July 29, 1982, prior to enactment of Public Laws 98-353 and 98-454, sent letters to the chairmen of the Committees on the Judiciary of the United States Senate and House of Representatives, recommending that Congress enact legislation to ensure the continued applicability of the federal bankruptcy laws in the Northern Mariana Islands and the continued existence of bankruptcy court jurisdiction in the Northern Mariana Islands.

The purposes of the federal bankruptcy laws could be served instead by enactment of a local bankruptcy statute in the Northern Mariana Islands. While the United States Constitution requires a uniform federal law of bankruptcy, Congress has the power under the territorial clause, Article IV, Section 3, Clause 2, of the Constitution, to permit deviation from the rule of uniformity for the Northern Mariana Islands.* But the policy considerations that supported adoption of the constitutional rule of uniformity support application in the Northern Mariana Islands of the same bankruptcy law that is applicable elsewhere in the United States. "The purpose behind the [constitutional] grant of the bankruptcy [power] . . . was to enable the new central government to eradicate the opportunities for fraud and forum-shopping engendered by varying state insolvency . . . laws . . . ." In re Penn Central Transportation Co., 384 F. Supp. 895, 915 (Spec. Ct., RRRA 1974). See generally 3 J. Story, Commentaries on the Constitution of the United States §§ 1102-1104 (1833); Perez v. Campbell, 402 U.S. 637, 656 (1971).

Over the years substantial thought and effort has brought the federal bankruptcy laws into their present form. Development of a local bankruptcy law for the Northern Mariana Islands would require a large allocation of the limited resources of the island, another reason for instead applying the federal law in the Northern Mariana Islands.

TITLE 12. BANKS AND BANKING.

The statutes.

The federal banking laws interact with State banking laws to constitute a complex regulatory framework:

> Federal and state governments have the power to regulate banking, including requiring incorporation of bank entities, in order to protect commerce and public welfare, which are deeply affected by the banking industry.
>
> A bank can choose to be chartered and regulated by a state or by the federal government under the dual banking systems. State banks electing insurance under the Federal Deposit Insurance Corporation (FDIC) or membership in the Federal Reserve System are also subject to federal regulation. All banks are subject to state rules on branch banking and trust operations.

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*See Downes v. Bidwell, 182 U.S. 244 (1901). See also Senate Report 94-433, The Covenant to Establish a Commonwealth of the Northern Mariana Islands 79 (1975).

> The Federal Reserve banks and the Federal Reserve System were created in 1913 to act as a central control on currency. The FDIC was created in 1933 to promote depositor confidence and ensure sound banking practices through deposit insurance, interest rate regulation, bank merger regulation, etc.
>
> National banks are regulated by the Comptroller of the Currency. State banks that are members of the Federal Reserve System are regulated by the Federal Reserve. State nonmember banks that elect to be insured are regulated by the FDIC. State law still applies to state banks unless federal law clearly preempts an area of regulation.

W. Schlicting, et al., Banking Law 2-2 (1982) (citations omitted).

Included among the banking laws are many statutes intended to improve housing and to encourage homeownership in the United States, often through the mechanism of federal insurance of mortgage loans. Title 12 also includes laws governing savings and loan institutions, credit unions, farm credit banks, and other financial institutions.

The federal banking laws are described in greater detail in the chapter-by-chapter analysis of title 12, below.

Present applicability.

Section 502(a)(1) of the Covenant provides that federal banking laws in effect on January 9, 1978, shall apply to the Northern Mariana Islands as they do to Guam. Not entirely clear is the range of laws intended to be encompassed by the phrase "federal banking laws." For example, a question could arise as to whether subchapter VIII of chapter 13 of title 12, authorizing the Secretary of Housing and Urban Development to provide mortgage insurance for construction of housing for military personnel and their dependents near military installations, is a banking law. It is even possible negotiators of the Covenant intended section 502(a)(1) of the Covenant to embrace only a few of the federal banking laws: The United States Senate Report on the Covenant identifies sections 143, 466, and 601 to 632 of title 12 as the laws to which section 502(a)(1) of the Covenant is

addressed.* The language of the Covenant is not so restricted, however, and can be reasonably read to mean that all of title 12 applies to the Northern Mariana Islands as it does to Guam. See Marianas Political Status Commission, Section by Section Analysis of the Covenant (1975).**

Fortunately, most federal banking laws apply to Guam as they do to the States of the United States. Federal laws applicable to Guam and the several States that are not banking laws (or in the other categories enumerated in section 502(a)(1) of the Covenant) generally apply to the Northern Mariana Islands as they do to the several States. Covenant § 502(a)(2). Only when a law applies differently to Guam than to the several States does it become important to determine whether the law is a banking law.***

The present applicability of the statutes in title 12 of the United States Code to the Northern Mariana Islands is discussed in greater detail in the chapter-by-chapter analysis, below.

A number of provisions in title 12 impose United States citizenship requirements. Directors of a national bank or a federal

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*Senate Report No. 94-433, The Covenant to Establish a Commonwealth of the Northern Mariana Islands 65, 76 (1975). See also Report of the Joint Drafting Committee on the Negotiating History of the Covenant, at C-3 (1975), reprinted at Hearings before the Subcommittee on Territorial and Insular Affairs of the House Committee on Interior and Insular Affairs on H.J. Res. 549 et al. to Approve the "Covenant to Establish a Commonwealth of the Northern Mariana Islands," 94th Cong., 1st Sess. 374, 376 (1975).

**The Analysis is reprinted in Hearings on the Covenant to Establish the Commonwealth of the Northern Mariana Islands before the Subcommittee on Territorial and Insular Affairs of the House Committee on Interior and Insular Affairs, 94th Cong., 1st Sess. 626 (1975) and in Hearings on the Northern Mariana Islands before the Senate Committee on Interior and Insular Affairs, 94th Cong., 1st Sess. 356 (1975).

***For this reason, in the chapter-by-chapter analysis that follows, if there is any doubt that a law is a banking law, no effort is made to determine whether its applicability to the Northern Mariana Islands is governed by paragraph (1) or paragraph (2) of section 502(a) of the Covenant when the law applies uniformly to Guam and the several States.

home loan bank must, in general, be United States citizens. 12 U.S.C. §§ 72, 1427(a). The majority of the stock in corporations organized to engage in international or foreign banking or financial operations, or in banking or financial operations in a dependency or possession of the United States, must be held by United States citizens. Id. § 619. Members of boards of directors of farm credit district boards must have been United States citizens for at least ten years. Id. § 2222(b). In addition, deposits by United States citizens or residents in United States branches of foreign banks are insured while other deposits are not. Id. § 1813(m)(2).

In its January 1982 interim report to the United States Congress the Commission recommended enactment of legislation to treat citizens of the Northern Mariana Islands as citizens of the United States for purposes of these requirements. In 1983 Congress enacted Public Law 98-213, 97 Stat. 1459. Sections 19 to 23 of that statute allow the President by proclamation to declare that citizenship requirements in particular federal laws are not applicable to citizens of the Northern Mariana Islands. In 1984 the President removed for citizens of the Northern Mariana Islands the citizenship restriction in these sections. Presidential Proclamation 5207, §§ 4(b)-(e), 6(b), 49 Fed. Reg. 24365.*

Discussion.

The Marianas Political Status Commission, at page 51 of its Section by Section Analysis of the Covenant, noted the importance of federal banking laws to the Northern Mariana Islands and its expectation that this Commission would review those laws:

> The federal banking laws will apply as they apply in Guam. These federal laws are generally designed to protect depositors and facilitate the efficient operation of a national banking system in the United States. For the most part the federal banking laws apply in the states in the same way as they apply in the territories and the Commonwealth of Puerto Rico, but there are certain differences which are intended to assure that all the financial resources needed to promote economic development

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*United States citizenship is also required for certain seats on the Board of Directors of the Federal Deposit Insurance Corporation, id. § 1812, and for membership on the Federal Farm Credit Board, id. § 2242. No recommendations were made with regard to these citizenship requirements in the Commission's January 1982 interim report to the United States Congress.

are available. Such resources are not usually available from local sources alone. It is expected that the Commission on Federal Laws established by Section 504 will review the application of the federal banking laws to assure that there is adequate local control over important financial institutions. It is also important to note the Government of the Northern Mariana Islands will have the authority to charter local banks and other financial institutions similar to that possessed by the States.

The importance of sound banking institutions to a developing economy like that of the Northern Mariana Islands should not be underestimated. A functioning banking system encourages savings and investment by the private sector, helps to develop an organized capital market, and allows entry of foreign capital to supplement local savings.* For the small, less-developed economy of the Northern Mariana Islands where local capital is scarce, access to the national banking institutions of the United States may be critically important to economic growth. Developing and administering a local alternative to the national banking structure would be expensive, and is neither feasible nor wise. Accordingly, the federal banking laws now applicable to the Northern Mariana Islands should remain applicable, with only a few minor adjustments, while most of the federal banking laws not now applicable to the Northern Mariana Islands should be made applicable there. The necessary changes are included in the Recommendations section of this report. The individual recommendations are listed in the note below.

* * *

Note. In the chapter-by-chapter analysis that follows, chapters 9 and 15 are not discussed as they have been repealed or omitted. Chapters 7, 7A, and 7B, dealing with the Farm Credit Administration, agricultural marketing, and regional agricultural credit corporations, respectively, have been transferred for the most part to chapter 23 or repealed. Provisions still in force in those chapters are discussed with chapter 23 in the recommendation, Farm Credit System, in the Recommendations section of this report. Also not discussed is chapter 20, authorizing the Federal Reserve Board to impose certain credit controls, since that legislation expired by its own terms on June 30, 1982.

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*See generally the studies of the United Nations Industrial Development Organization: Summaries of the Industrial Development Plans of 30 Countries (1970); Summaries of Industrial Development Plans (1971); Summaries of Industrial Development Plans (1973).

See also the following recommendations in the Recommendations section of this report:

Conversion of national banks into banks organized under laws of the Northern Mariana Islands; merger of banks organized under laws of the Northern Mariana Islands into national banks.

Maximum amounts for federally-insured mortgages in the Northern Mariana Islands.

Insurance of "public unit" accounts in federally-insured savings and loan associations.

Escheat of abandoned money orders and traveler's checks.

Northern Mariana Islands banks' participation in domestic markets.

National Consumer Cooperative Bank.

Depository Management Interlocks Act.

Right to financial privacy.

* * *

Chapter 1. The Comptroller of the Currency.

and

Chapter 2. National Banks.

The statutes.

Chapters 1 and 2 of title 12 establish, respectively, the Office of the Comptroller of the Currency and the national banking system. The Comptroller and the national banking system originated with the passage of the National Bank Act in 1864. Act of June 3, 1864, c.106, 13 Stat. 99.

> [The Comptroller] as the administrator of national banks, is responsible for the execution of laws relating to national banks and promulgates rules and regulations governing the operation of approximately 4,450 national and District of Columbia banks. Approval of the Comptroller is required for the organization of new national banks, conversion of State-chartered banks into national banks, consolidations or

mergers of banks where the surviving institution is a national bank, and the establishment of branches by national banks.

U.S. Government Manual 429 (1982). See also White, Banking Law 45, 66 (1976).

National banks are chartered by the Federal Government.* Chapter 2 of title 12 governs the organization, operation, regulation, and dissolution of national banks.

Present applicability.

Chapters 1 and 2 of title 12 apply to the Northern Mariana Islands. Section 41 of title 12 provides that "the National Bank Act and all other Acts of Congress relating to national banks shall, insofar as not locally inapplicable on and after August 1, 1956, apply to Guam." See also 12 U.S.C. §§ 42, 95(b)(2), 95a(3), 202. Chapters 1 and 2 are among those laws made applicable to Guam by section 41 and thus made applicable to the Northern Mariana Islands by operation of section 502(a)(1) of the Covenant.

National banks in "dependencies" or "insular possessions" of the United States are treated differently from national banks in the States for purposes of reserve requirements. 12 U.S.C. §§ 143-144. See also id. § 466. Compare id. §§ 142, 462. Guam is a "dependency or insular possession" of the United States, so national banks on Guam are subject to these different reserve requirements. Since federal banking laws apply to the Northern Mariana Islands as they do to Guam by operation of section 502(a)(1) of the Covenant, national banks in the Northern Mariana Islands are also subject to the reserve requirements applicable to national banks in "dependencies" or "insular possessions" of the United States.

Guam and the Northern Mariana Islands are treated differently from other parts of the United States in one other important respect. National banks in Guam and the Northern Mariana Islands may not be converted into State banks as may national banks in "any State, any Territory of the United States, Puerto Rico, or the Virgin Islands,"

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*State governments may also grant charters to banks.

or in the District of Columbia. 12 U.S.C. §§ 214, 214a.* Nor may State banks be consolidated or merged into national banks in Guam and the Northern Mariana Islands as they may in those other jurisdictions. Id. §§ 215, 215b.**

Discussion.

Legislation is proposed to allow national banks in the Northern Mariana Islands to convert into or consolidate or merge with banks organized under the laws of the Northern Mariana Islands and to allow banks organized under the laws of the Northern Mariana Islands to be merged into national banks. See the recommendation, Conversion of national banks into banks organized under laws of the Northern Mariana Islands; merger of banks organized under laws of the Northern Mariana Islands into national banks, in the Recommendations section of this report.

Chapter 3. Federal Reserve System.

The statutes.

The Federal Reserve System, established in 1913, serves as the nation's central bank. Its principal responsibility is the execution of monetary policy, although it also tranfers funds between banks, supervises banks, handles government accounts, and acts as a lender of last resort:

> It is the responsibility of the Federal Reserve System to contribute to the strength and vitality of the U.S. economy. By influencing the lending and investing activities of commercial banks and the cost and availability of money and credit, the Federal Reserve System can help promote the full use of human and capital resources, the growth of productivity, relatively stable prices, and

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*The term "Territory" here apparently refers to Alaska and Hawaii, which were not yet States when this legislation became law in 1950. Guam and the Virgin Islands then, as now, were unincorporated but organized territories of the United States. The mention of the Virgin Islands in the legislation without mention of Guam strongly implies that national banks in Guam (and, consequently, in the Northern Mariana Islands) cannot convert into State banks under the legislation.

**Section 215b, like section 214, above, defines "State," to include the "Territories" and the "Virgin Islands" but to omit Guam. Again the implication is that State banks in Guam (and, consequently, in the Northern Mariana Islands) may not be consolidated or merged into national banks under these provisions.

> equilibrium in the Nation's international balance of payments. Through its supervisory and regulatory banking functions, the Federal Reserve System helps maintain a commercial banking system that is responsive to the Nation's financial needs and objectives.
>
> The System consists of six parts: the Board of Governors in Washington; the 12 Federal Reserve Banks, their 25 branches and other facilities situated throughout the country; the Federal Open Market Committee; the Federal Advisory Council; the Consumer Advisory Council; and the member commercial banks, which include all national banks and State-chartered banks that have voluntarily joined the System.

U.S. Government Manual 504 (1982).

Present applicability.

Banks located in dependencies and insular possessions of the United States are given specific rights and responsibilities vis-a-vis the Federal Reserve System by chapter 3 of title 12. Because Guam is a dependency or insular possession of the United States, the special rules applicable to dependencies and insular possessions apply to banks in the Northern Mariana Islands by operation of section 502(a)(1) of the Covenant.

Banks organized under the laws of the Northern Mariana Islands and national banks in the Northern Mariana Islands may become members of the Federal Reserve System, but are not required to become members. 12 U.S.C. § 466. (National banks located in the United States but not located in a dependency or insular possession must become members of the System. Id. § 282.) If such banks become members of the System, they must comply with all requirements generally applicable to members of the System. Id. § 466.* If they do not become members, they remain subject to other applicable federal and Northern Mariana Islands laws. Id. Thus, banks in the Northern Mariana Islands that become members are subject to the

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*Member banks in the Northern Mariana Islands are specifically subject to the bank examination provisions applicable to all member banks. Those provisions, sections 481 et seq. of title 12, were enacted as part of (or are amendments to) the National Bank Act, which is specifically applicable to Guam. 12 U.S.C. § 41. The bank examination provisions are thus specifically applicable to member banks in the Northern Mariana Islands by operation of section 502(a)(1) of the Covenant.

reserve requirements applicable to member banks. Id. See also id. § 462. National banks that do not become members of the Federal Reserve System are subject to the reserve requirements imposed on national banks in dependencies and insular possessions. See the discussion of chapter 2 of title 12, above. Banks organized under the laws of the Northern Mariana Islands that do not become members of the System are subject only to reserve requirements imposed by the laws of the Northern Mariana Islands, just as State banks that do not become members of the System are subject only to State-imposed reserve requirements.

The Board of Governors of the Federal Reserve System is authorized to impose additional reserve requirements to implement monetary policy. Id. § 461. These additional requirements--which apply to a wide variety of depository institutions--do not apply to deposits payable only outside the States of the United States and the District of Columbia. Id. § 461(b)(6). Requirements imposed pursuant to this authority thus would not apply to deposits payable only in Guam or the Northern Mariana Islands.

Section 371a of title 12 prohibits banks that are members of the Federal Reserve system from paying interest on demand deposits, except in certain accounts where withdrawals are made through negotiated orders of withdrawal (NOW accounts). By its own terms this prohibition does not apply to deposits in member banks outside the States of United States and the District of Columbia. It consequently does not apply to deposits in banks in the Northern Mariana Islands, even though they may be members of the Federal Reserve System.

Until 1986, the Board of Governors of the Federal Reserve System has the power to prescribe rules governing the payment and advertisement of interest by member banks on time and savings deposits. Id. § 371b. See also id. § 3506(b). This authority also does not extend to interest payable only outside the States of the United States and the District of Columbia by member banks. Id. § 371b. It consequently is inapplicable to interest payable only in the Northern Mariana Islands by member banks.

Chapter 4. Taxation.

The statutes.

Chapter 4 sets forth provisions on taxation of different types of banks. Federal Reserve banks (but not other banks that are members of the Federal Reserve System) are exempted from all federal, State, and local taxation other than taxes on real estate. 12 U.S.C. § 531. A national bank must pay every six months a tax equal to one-half of one percent of its average amount of notes in circulation. Id. § 541. It is otherwise treated as a bank organized

under the laws of the State or other jurisdiction in which its principal office is located for purposes of federal or State taxation. Id. § 548.

Present applicability.

Sections 541 and 548 of title 12 are derived from the National Bank Act, which is specifically applicable to Guam. 12 U.S.C. § 41. See Bank of America v. Chaco, 539 F.2d 1226 (9th Cir. 1976). Those sections are consequently applicable to the Northern Mariana Islands by operation of section 502(a)(1) of the Covenant.

Section 531 is applicable to Federal Reserve banks, wherever located, and would apply to any Federal Reserve bank located in the Northern Mariana Islands, in the unlikely event one were ever located there.

Chapter 5. Crimes and Offenses.

The statute.

This chapter contains a single section, 12 U.S.C. § 582, which makes criminal the offer or receipt of United States notes or national bank notes by a national bank as collateral for a loan.

Present applicability.

Section 582 is a law relating to national banks and is thus specifically applicable to national banks on Guam. 12 U.S.C. § 41. By operation of section 502(a)(1) of the Covenant, section 582 is also applicable to national banks in the Northern Mariana Islands.

Chapter 6. Foreign Banking.

The statutes.

Chapter 6 of title 12 collects federal laws pertaining to foreign operations by national banks and by so-called "Edge Act" corporations. National banks are authorized to establish branches in foreign countries and in "dependencies or insular possessions of the United States." 12 U.S.C. § 601. National banks may also invest in so-called "Agreement" corporations, which engage in banking in foreign countries or in dependencies or insular possessions of the United States. Id. National banks are further authorized to hold ownership interests in foreign banks or banks organized under the laws of a dependency or an insular possession of the United States. Id.

State banks that are members of the Federal Reserve System may also establish branches in foreign countries or in dependencies or insular possessions of the United States. Id. § 321.

Edge Act corporations were originally authorized to allow entities other than the established American banks to engage in foreign banking. Travis v. National City Bank, 23 F. Supp. 363, 367 (E.D.N.Y. 1938). Edge Act corporations are quite similar to the Agreement corporations in which national banks may invest. See 12 C.F.R. § 211.4 (1984). Edge Act corporations engage only in international or foreign banking, and banking in dependencies or insular possessions of the United States. Id. § 616. They are used primarily to finance international trade, although they may provide many other banking services. Id. § 615.

Present applicability.

In making federal banking laws apply to the Northern Mariana Islands as they apply to Guam, the negotiators of the Covenant were particularly concerned with chapter 6 of title 12. See Report of the Joint Drafting Committee on the Negotiating History of the Covenant, at C-3 (1975);* Senate Report No. 94-433, The Covenant to Establish a Commonwealth of the Northern Mariana Islands 65, 76 (1975).

Guam is a dependency or insular possession of the United States, as that term is used in this chapter. By operation of section 502(a)(1) of the Covenant, the Northern Mariana Islands is also

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*This report is reprinted at Hearings before the Subcommittee on Territorial and Insular Affairs of the House Committee on Interior and Insular Affairs on H.J. Res. 549 et al. to Approve the "Covenant to Establish a Commonwealth of the Northern Mariana Islands," 94th Cong., 1st Sess. 374, 376 (1975).

treated as a dependency or insular possession for purposes of this chapter. Chapter 6 generally treats dependencies or insular possessions of the United States in the same way as foreign countries are treated.*

National banks thus may establish branches in the Northern Mariana Islands, may invest in Agreement corporations engaged in banking in the Northern Mariana Islands, and hold ownership interests in banks organized under the laws of the Northern Mariana Islands. (And, as noted in the discussion of chapter 2, above, national banks may be organized in the Northern Mariana Islands.) By contrast, a national bank is generally prohibited from establishing a branch in a State other than the State in which it is situated. 12 U.S.C. § 36. See Leibowitz, The Applicability of Federal Law to Guam, 16 Virginia Journal of International Law 21, 46 (1975).

Banks organized under the laws of any of the fifty States, the District of Columbia, Puerto Rico, or the Virgin Islands, if they are members of the Federal Reserve System, may also establish branches in the Northern Mariana Islands. 12 U.S.C. §§ 214(a), 321. (But banks organized under the laws of the Northern Mariana Islands would generally not be permitted by applicable State law to establish a branch in one of the States.)

Edge Act corporations are also permitted to engage in banking in the Northern Mariana Islands. Edge Act corporations must have their home office in "the United States." Id. § 613. Since these corporations are not permitted to do business in the United States, id. § 616, but are permitted to do business in the dependencies and insular possessions of the United States (including the Northern

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*An exception is found in section 604 of title 12, which requires national banks to keep separate accounts for each of their foreign branches. National banks are not required to maintain separate accounts for branches in dependencies or insular possessions. In re Rivera, 79 F. Supp. 510, 512 (S.D.N.Y. 1948).

Mariana Islands), id. § 611, the "United States," for purposes of these provisions, does not include the dependencies and insular possessions of the United States and, thus, does not include the Northern Mariana Islands. Accordingly, an Edge Act corporation may not have its home office in the Northern Mariana Islands (or any other dependency or insular possession).

Section 632 of title 12 is of particularly broad scope. It provides, in part, that any civil suit to which any corporation organized under the laws of the United States is a party, arising out of transactions involving banking in a dependency or insular possession of the United States, shall be within the original jurisdiction of the district courts of the United States. The District Court of the Northern Mariana Islands has all the jurisdiction of a district court of the United States. 48 U.S.C. § 1694a. The District Court for the Northern Mariana Islands thus has original jurisdiction over any lawsuit involving banking arising in the Northern Mariana Islands if one of the parties is a corporation organized under the laws of the United States (for example, a national bank or an Edge Act corporation). See generally First Federal Savings & Loan Association of Puerto Rico v. Ruiz de Jesus, 644 F.2d 910 (1st Cir. 1981).

Chapter 6A. Export-Import Bank of the United States.

The statutes.

This chapter creates the Export-Import Bank of the United States, popularly known as the Eximbank. The purpose of the Export-Import Bank is to

> aid in financing and to facilitate exports and imports and the exchange of commodities between the United States or any of its Territories or insular possessions and any foreign country or the agencies or nationals thereof. The Export-Import Bank Act of 1945, as amended, expresses the policy of the Congress that the Bank should supplement and encourage and not compete with private capital; that loans should generally be for specific purposes at rates based upon the average cost of money to the Bank as well as the Bank's mandate to provide competitive financing, and offer reasonable assurance of repayment; that financing should be provided for U.S. exports at rates and on terms which are competitive with the financing provided by the U.S.'s principal foreign competitors; and that in authorizing loans or guarantees, account should be taken of any serious adverse effects upon the competitive position of U.S. industry, the availability of materials which are in short supply in the United States, and employment in the United States.

U.S. Government Manual 475 (1982).

The Export-Import Bank operates four main programs:

> (1) direct long-term loans; (2) guarantees (principally to commercial banks); (3) short-term and medium-term insurance; and (4) discount loans to commercial banks. The greatest dollar volume of bank assistance has consisted of direct financing to buyers abroad of U.S. goods and services. This assistance has taken the form of long-term credits to public or private entities for the purchase and export of capital equipment and related services; credits to foreign lending institutions for relending to local enterprises; credits to countries suffering temporary dollar shortages to maintain the flow of U.S. trade; and agricultural commodity credits. Through these programs the bank has become involved in the promotion of development projects in less developed countries.

4 Encyclopedia Britannica Macropaedia 9 (15th ed. 1975).

Present applicability.

Chapter 6A gives exporters in the Northern Mariana Islands access to the Export-Import Bank by directing the Bank to aid in financing and to facilitate exports and imports and the exchange of commodities between the United States or any of its Territories or insular possessions and any foreign country or the agencies or nationals thereof. 12 U.S.C. § 635. Guam is a Territory or insular possession of the United States. By operation of section 502(a) of the Covenant, the Northern Mariana Islands is also treated as part of the United States for purposes of this chapter.

It should be noted that the Export-Import Bank cannot aid in financing exports from the United States to the Northern Mariana Islands, since the Northern Mariana Islands is part of the United States and is not a foreign country for purposes of this chapter.

Discussion.

The Export-Import Bank's purpose is to aid American exporters who cannot obtain private financing. The Eximbank has made concerted efforts to help small firms obtain export assistance. This assistance is potentially useful to the Northern Mariana Islands, which lacks private capital to finance exports.

Chapter 7. Farm Credit Administration.

and

Chapter 7A. Agricultural Marketing.

and

Chapter 7B. Regional Agricultural Credit Corporations.

Chapters 7, 7A, and 7B are discussed together with chapter 23 in the recommendation, Farm Credit System, in the Recommendations section of this report.

Chapter 8. Adjustment and Cancellation of Farm Loans.

The statutes.

Chapter 8 provides for the compromise, adjustment, and cancellation of farm loans made by the Federal Government when a debtor, acting in good faith, cannot pay off a debt under $1,000 or if a debtor is deceased (and his estate cannot pay) or has been missing for over two years or has declared bankruptcy. 12 U.S.C. § 1150.

Present applicability.

Chapter 8 does not define its geographic reach. Only where the farm credit system operates, however, are the adjustment and cancellation provisions of chapter 8 of any importance. The farm credit system is governed by the provisions of chapter 23 of title 12. Under accepted principles of statutory construction, if chapter 23 is applicable to the Northern Mariana Islands, so too is chapter 8. 2A Sutherland, Statutes and Statutory Construction § 51.03 (C. Sands ed. 1973). The applicability of chapter 23 is discussed in the recommendation, Farm Credit System, in the Recommendations section of this report.

Chapter 10. Local Agricultural-Credit Corporations, Livestock-Loan Companies and Like Organizations; Loans to Individuals to Aid Information or to Increase Capital Stock.

The statutes.

This chapter establishes a revolving fund and authorizes loans from that fund by the Farm Credit Administration to individuals to form and capitalize local agricultural-credit corporations, livestock-loan companies, or similar organizations.

Present applicability.

The geographic extent of chapter 10 is not defined. Chapter 10 is administered by the Farm Credit Administration, which is established by provisions in chapter 23 of title 12. Under accepted principles of statutory construction, if chapter 23 is applicable to the Northern Mariana Islands, so too is chapter 10. 2A Sutherland, Statutes and Statutory Construction § 51.03 (C. Sands ed. 1973). The applicability of chapter 23 is discussed in the recommendation, Farm Credit System, in the Recommendations section of this report.

Chapter 11. Federal Home Loan Banks.

and

Chapter 11A. Federal Home Loan Mortgage Corporation.

The statutes.

Chapter 11 creates the Federal Home Loan Bank Board and authorizes establishment of regional Federal Home Loan Banks. The Federal Home Loan Bank Board regulates savings and loan associations much as the Board of Governors of the Federal Reserve System regulates banks. All State-chartered savings and loan associations insured by the Federal Savings and Loan Insurance Corporation (described in the discussion of chapter 12, below) and all federally-chartered savings and loan associations are required to be members of the system. Also eligible to become members are building and loan associations, homestead associations, savings banks, cooperative banks, and insurance firms.

The Federal Home Loan Bank Board charters and supervises federal savings and loan associations and loans money to member institutions engaged in residential mortgage financing. See Federal Banking Law Report (CCH) 1561-62.

Chapter 11A creates the Federal Home Loan Mortgage Corporation.

> [This corporation] is authorized to purchase, and make commitments to purchase, residential mortgages from any federal home loan bank, the Federal Savings and Loan Corporation, any member of a federal home loan bank, or any other financial institution whose deposits or accounts are insured by an agency of the United States or under the laws of any state if the total amount of deposits held in such institutions in the state is more than 20% of the total amount of such deposits in all banks, building and loan, savings and loan, and homestead associations. The Corporation is also authorized to purchase and make commitments to purchase residential mortgages from any mortgagee approved by the Housing and Urban Development

> Secretary for participation in any mortgage insurance program under the National Housing Act. It is authorized to deal with, and sell or otherwise dispose of, any such mortgage or interest therein.

Id. at 1564.

Present applicability.

Guam is defined as a "State" for purposes of chapter 11. 12 U.S.C. § 1422(3). Chapter 11A is expressly applicable to the territories and possessions of the United States. Id. § 1458. See also id. § 1451(k). Since Guam is a territory or possession of the United States, chapter 11A is applicable on Guam. By operation of section 502(a) of the Covenant, chapters 11 and 11A are also applicable to the Northern Mariana Islands.

Chapter 12. Federal Savings and Loan Associations.

The statutes.

Federal savings and loan associations are chartered by the Federal Home Loan Bank Board.* A principal purpose of the associations is provision of financing for the purchase of homes. 12 U.S.C. § 1464(a). Chapter 12 of title 12 governs the organization, operation, regulation, and dissolution of federal savings and loan associations. (The powers of federal savings and loan associations were substantially expanded, and restrictions on the associations eased, with the 1982 passage of the Garn-St. Germain Depository Institutions Act, Public Law 97-320, 96 Stat. 1469.)

Present applicability.

Chapter 12 of title 12 is specifically applicable to Guam. 12 U.S.C. § 1466. See also id. §§ 1464(c)(5)(C); 1464(c)(8)(A); 1464(d)(13)(A)(3); 1464(i)(3)(A); 1470(b)(4). By operation of section 502(a) of the Covenant, the chapter is also applicable to the Northern Mariana Islands.

Chapter 13. National Housing.

This chapter was enacted originally in 1934 as the National Housing Act. That Act, with its varied and numerous amendments,

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*Savings and loan associations may also be chartered by State governments.

includes--beyond its basic provisions--thirteen titles setting forth particular programs. The titles (designated as subchapters in the organization of the United States Code) are described below.

Section 1715d of title 12 allows the Secretary of Housing and Urban Development to alter particular requirements of this chapter with respect to Alaska, Guam, and Hawaii. The chapter is thus applicable to Guam, and by operation of section 502(a) of the Covenant, to the Northern Mariana Islands.*

Many programs authorized by this chapter carry their own applicability provisions. None of these provisions specifically excludes Guam or the Northern Mariana Islands from a particular program. The various provisions related to applicability are noted in the survey of the National Housing Act that follows. Even though those separate applicability provisions are noted, section 1715d compels the conclusion that the entire chapter applies to Guam and, pursuant to the Covenant, to the Northern Mariana Islands.

Provisions preceding subchapter I.

In addition to the provisions contained in the thirteen active subchapters of chapter 13, a number of provisions not classified to any subchapter precede subchapter I. Those provisions are discussed first.

The statutes.

The provisions of chapter 13 preceding subchapter I are in large part concerned with granting powers to and establishing housekeeping rules for the Secretary of Housing and Urban Development and other federal agencies. See, for example, 12 U.S.C. §§ 1701c, 1701d-4, 1701g-5, 1701h. Other provisions set forth rules governing mortgages

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*The location of this chapter in title 12 of the United States Code, Banks and Banking, leads to the conclusion that the provisions of the chapter are federal banking laws. Further, the subject of the chapter is mortgage insurance, and mortgages are a traditional concern of banking. If the provisions of chapter 13 are considered federal banking laws, they apply to the Northern Mariana Islands--pursuant to section 502(a)(1) of the Covenant--as they apply to Guam. They could also be considered as laws providing federal services and financial assistance programs, in which case they would also apply to the Northern Mariana Islands, under section 502(a)(1), as they apply to Guam. Otherwise, they are laws applicable to Guam and the several States, and apply to the Northern Mariana Islands as they do to the several States (and not as they do to Guam). Covenant § 502(a)(2).

insured pursuant to the various subchapters of chapter 13. See, for example, id. § 1701j-1, 1701l, 1701l-1. Still other provisions establish particular assistance programs. See id. § 1701q (loans for housing and related facilities for elderly or handicapped families); § 1701s (rent supplements for qualified lower income families); § 1701x(b) (planning loans to nonprofit organizations or public housing agencies engaged in construction or rehabilitation of housing for low- and moderate-income families).

Present applicability.

Whether the provisions of chapter 13 preceding subchapter I are applicable to the Northern Mariana Islands is significant only for those provisions establishing particular assistance programs. The provisions granting powers to and establishing housekeeping rules for federal agencies apply wherever those agencies operate. The provisions setting forth rules governing mortgages insured pursuant to the various subchapters of chapter 13 are applicable to the Northern Mariana Islands in accordance with the provisions of those subchapters (all of which are applicable to the Northern Mariana Islands).

"State" is defined to include "the possessions of the United States" for purposes of the provisions authorizing loans for housing and related facilities for elderly or handicapped families. 12 U.S.C. § 1701q(d)(5). When this definition was enacted in 1959, federal law provided that "no law of the United States hereafter enacted shall have any force or effect within Guam unless specifically made applicable by an Act of Congress either by reference to Guam by name or by reference to 'possessions.'" Act of August 1, 1950, c.512, § 25(b), 64 Stat. 390, 48 U.S.C.A. § 1421c(b) (1952), repealed by Public Law 90-497, § 7, 82 Stat. 842 (September 11, 1968). The definition of "State" for purposes of this section thus includes Guam and, by operation of section 502(a) of the Covenant, the Northern Mariana Islands. Although the statute does not otherwise define the areas in which this insurance program is available, the definition of "State" to include particular jurisdictions is strong evidence of congressional intent that the program be available in those jurisdictions. Rubenstein v. United States, 153 F.2d 127, 129 (D.C. Cir. 1946). Accordingly, the loan assistance authorized by this statute is available in the Northern Mariana Islands.

Rent supplements are paid to "housing owners" on behalf of "qualified tenants." 12 U.S.C. § 1701s(a). "Housing owners" are mortgagors under section 1715l of title 12, id. § 1701(b), a section which--as further discussed below--applies to the Northern Mariana Islands. "Qualified tenants" are defined by reference to section 1437f of title 42 of the United States Code. 12 U.S.C. § 1701s(c)(1). Section 1437f is applicable to the territories and

possessions of the United States. 42 U.S.C. § 1437a(b)(7). Guam is a territory or possession of the United States, so section 1437f is applicable to the Northern Mariana Islands by operation of section 502(a) of the Covenant. Since both "housing owners" and "qualified tenants" may be found in the Northern Mariana Islands, the rent supplement program is available in the Northern Mariana Islands.

The planning loans authorized by section 1701x(b) are available for projects authorized under section 1715z of title 12 or "any other federally assisted program." Section 1715z projects, as further discussed below, may be constructed in the Northern Mariana Islands, so planning loans for those projects are also available in the Northern Mariana Islands. Planning loans for other federally assisted programs are available in the Northern Mariana Islands to the same extent as the programs themselves are available in the Northern Mariana Islands.

Subchapter I. Housing Renovation and Modernization.

The statutes.

This subchapter, title I of the National Housing Act, offers Federal Housing Administration (FHA) insurance to private lending institutions against losses on loans made to finance repairs and improvements to existing structures and the building of small, new, non-residential structures. See generally 12 U.S.C. §§ 1702-1706. See also Federal Banking Law Reporter (CCH) 1571-72.

Present applicability.

The principal programs authorized by this subchapter are specifically available in Guam and the Trust Territory of the Pacific Islands. 12 U.S.C. § 1706(d). By operation of section 502(a) of the Covenant, these programs are also available in the Northern Mariana Islands.

Section 1706e of title 12 authorizes the Secretary of Housing and Urban Development to transfer certain federally-owned residential structures to State and local governments for use in urban homestead programs. Section 1706e does not specify whether Guam or the Northern Mariana Islands are entitled to participate in the program. Regulations issued under authority of this section, however, define Guam and the Trust Territory of the Pacific Islands as local governments qualified to participate. 24 C.F.R. § 590.5(q) (1984). By operation of section 502(a) of the Covenant, the Northern Mariana Islands is also eligible to participate in the urban homestead program.

Subchapter II. Mortgage Insurance.

The statutes.

This subchapter, title II of the National Housing Act, is:

> designed to improve housing standards and conditions by utilizing the best available means for achieving a sustained long-term residential construction program with a minimum expenditure of federal funds and a maximum reliance upon private business enterprise. To this end the [Federal Housing Administration (FHA)] insures mortgages on both new and existing one- to four-family homes, on properties destroyed or damaged by major disasters, on single-family homes in suburban and outlying areas and small communities, and on farm homes located on plots of five acres or more adjacent to a public highway. The FHA insures mortgages on large scale rental housing projects which are intended to aid the production of reasonably priced rental accommodations for families and mortgages on cooperative housing. To aid in the elimination of slums and blighted areas, the FHA insures mortgages to assist the financing required for the rehabilitation of existing dwelling accommodations and to assist the financing of housing required to relocate families which might be displaced as a result of slum clearance. Under Title II, the FHA also insures mortgages to aid in the provision of housing accommodations for servicemen in the Armed Forces of the United States.

Federal Banking Law Reporter (CCH) 1572.

Present applicability.

"State" is defined to include Guam and the Trust Territory of the Pacific Islands for purposes of many programs authorized by this subchapter. See 12 U.S.C. §§ 1707(d), 1709 (mortgage insurance); id. § 1713(a)(7) (rental housing mortgage insurance); id. 1715k(c) (mortgage insurance for housing in urban renewal areas); id. § 1715l(c) (mortgage insurance for housing for low and moderate income families and displaced families); and id. § 1715y(b) (mortgage insurance for condominiums).

The Secretary of Housing and Urban Development has broad authority to make rules and regulations to carry out this subchapter. Id. § 1715b. Some of those rules and regulations define "State" to include Guam and the Trust Territory of the Pacific Islands for the purpose of particular programs. See 24 C.F.R. §§ 204.251(p), 250.101(h) (1984) (coinsurance under section 244 of the National Housing Act, 12 U.S.C. § 1715z-9); 24 C.F.R. § 232.1(h)(1984) (mortgage insurance for nursing homes and intermediate care

facilities, 12 U.S.C. § 1715w); and 24 C.F.R. § 242.1(g)(1984) (mortgage insurance for hospitals, 12 U.S.C. § 1715z-7).

Other regulations, by their mention of Guam, make clear particular programs are available in Guam. See 24 C.F.R. §§ 213.7(d)(2), 213.21 (1984) (mortgage insurance for cooperative housing, 12 U.S.C. § 1715e); 24 C.F.R. § 231.6(b) (1984) (mortgage insurance for housing for the elderly, 12 U.S.C. § 1715v); 24 C.F.R. § 235.31 (1984) (mortgage insurance for home ownership and housing project rehabilitation, 12 U.S.C. § 1715z); and 24 C.F.R. § 236.12(c)(2) (1984) (mortgage insurance and interest reduction payments for rental projects, 12 U.S.C. § 1715z-1).

Regulations for other programs authorized by subchapter II do not mention Guam. Yet those regulations often incorporate by reference regulations that do mention Guam, strongly implying that these programs are available in Guam. See 24 C.F.R. § 237.5 (1984), incorporating by reference subparts A of 24 C.F.R. parts 203, 220, 221, and 231, all of which are applicable to Guam (special mortgage insurance for low and moderate income families, 12 U.S.C. § 1715z-2); and 24 C.F.R. §§ 222.1 240.1 (1984), also incorporating by reference subpart A of 24 C.F.R. part 203 (mortgage insurance for servicemen and on loans to homeowners for purchase of land on which home is situated, 12 U.S.C. §§ 1715m, 1715z-5).

All of the programs available in Guam by the terms of the authorizing statute or by regulations implementing the authorizing statute are available in the Northern Mariana Islands by operation of section 502(a) of the Covenant.

Neither the statutes nor implementing regulations define the geographical applicability of some other programs authorized by this subchapter. 12 U.S.C. § 1715z and 24 C.F.R. §§ 235.301-.499 (1984) (periodic assistance payments to aid lower-income families in acquiring homes);* 12 U.S.C. § 1715z-1a (operating assistance for troubled multifamily housing projects); id. § 1715z-6 and 24 C.F.R. part 241 (1984) (supplementary financing for insured project mortgages); and 12 U.S.C. § 1715z-8 (mortgage assistance payments for middle-income families).

Even though these statutes and their implementing regulations do not specify geographical applicability, they are applicable to the Northern Mariana Islands, as is all of chapter 13 of title 12. See the analysis at the beginning of this discussion of chapter 13, above.

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*Authority for new contracts for assistance payments under this program expired November 30, 1983. 12 U.S.C. § 1715z(h)(1).

One statute in subchapter II may not be applicable to the Northern Mariana Islands. Section 1715d of title 12 allows the Secretary of Housing and Urban Development to increase the maximum amounts for federally-insured mortages in Alaska, Guam, and Hawaii to allow for high construction costs in those areas. Legislation is proposed in this report to confirm the Secretary's authority to increase the maximum amounts for federally-insured mortgages in the Northern Mariana Islands. See the recommendation, Maximum amounts for federally-insured mortgages in the Northern Mariana Islands, in the Recommendations section of this report.

Subchapter III. National Mortgage Associations.

The statutes.

This subchapter, title III of the National Housing Act, establishes the Federal National Mortgage Association (FNMA or Fannie Mae) and the Government National Mortgage Association (GNMA or Ginnie Mae). The FNMA is a government-sponsored corporation owned by private investors who are authorized to buy and sell FHA-insured mortgages (as well as mortgages backed by the Veterans Administration) to "provide a degree of liquidity for mortgage investments, thereby improving the distribution of investment capital available for home mortgage financing." Federal Banking Law Reporter (CCH) 1574.

The GNMA, which is administered by the Secretary of Housing and Urban Development, carries out the following programs:

> [T]he GNMA mortgage-backed securities program which provides secondary market financing for most FHA and VA home loans; the provision of special assistance in the financing of eligible types of federally underwritten mortgages; the provision of mortgage credit through the Emergency Home Purchase Assistance Act of 1974 (88 Stat. 1364; 12 U.S.C. 1723d), as amended; the management and liquidation of the portfolio of mortgages held by GNMA; and the management of three Federal asset trusts.

U.S. Government Manual 290-91 (1982).

Present applicability.

Both the FNMA and the GNMA are explicitly authorized to conduct business in any "Territory or possession" of the United States. 12 U.S.C. § 1723a(a). Guam is a "Territory or possession" of the United States. Accordingly, the FNMA and the GNMA may conduct business in Guam and, by operation of section 502(a) of the Covenant, in the Northern Mariana Islands.

Subchapter IV. Insurance of Savings and Loan Accounts.

The statutes.

This subchapter, title IV of the National Housing Act, creates the Federal Savings and Loan Insurance Corporation (FSLIC). The FSLIC, which is supervised by the Federal Home Loan Bank Board, insures savings deposited in savings and loan associations and similar thrift institutions, much as the Federal Deposit Insurance Corporation insures deposits in banks. The FSLIC

> insures the safety of savings up to $100,000 for each qualified account in an insured institution. Public unit accounts and individual retirement and Keogh accounts are also insured up to $100,000. All Federal savings and loan associations, and those State-chartered building and loan, savings and loan, homestead associations, and cooperative banks which apply and are approved, are insured.

U.S. Government Manual 495 (1982).

Present applicability.

The FSLIC is required to insure the accounts of all federally-chartered savings and loan associations and savings banks. 12 U.S.C. § 1726(a). Federally-chartered savings and loan associations may be organized in the Northern Mariana Islands. See the discussion of chapter 12, above. Accordingly, the FSLIC is also required to extend its services to the Northern Mariana Islands.

The FSLIC is also permitted to insure the accounts of savings and loan associations, building and loan associations, homestead associations, and cooperative banks organized and operated according to the laws of a territory or possession in which they are chartered or organized. 12 U.S.C. § 1726(a). Since Guam is a territory or possession, the accounts of eligible institutions in Guam may be insured by the FSLIC. By operation of section 502(a) of the Covenant, so too may the accounts of eligible institutions in the Northern Mariana Islands.*

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*See also id. §§ 1728(d)(1)(iv), 1729(c)(2), 1730(r)(1)(c); Public Law 96-221, § 527, 94 Stat. 132, 167 (defining "State," for purposes of section 1730g of title 12, to include the Northern Mariana Islands).

For purposes of provisions in this chapter regulating the activities of savings and loan holding companies, "State" is defined to include the District of Columbia and Puerto Rico, but not Guam, the Northern Mariana Islands, territories, or possessions. 12 U.S.C. § 1730a(a)(1)(J). The savings and loan holding companies subject to regulation, however, are defined to include "any company which directly or indirectly controls an insured institution. . . ." Id. § 1730a(a)(1)(D). Another provision recognizes that a regulated savings and loan holding company may have its principal office in a territory. Id. § 1730a(h)(3)(B). See also id. § 1730a(h)(2), (h)(3)(A),(h)(4).

"States" have particular functions under the provisions regulating savings and loan holding companies. See id. § 1730a(b)(4) (FSLIC may use reports filed with and examinations made by State supervisory authorities); § 1730a(e)(3) (holding company cannot control insured institutions in more than one State);* §1730a(g)(4) (State authority may request law enforcement by FSLIC). That a territory is not a State--and therefore unable to perform those particular functions--does not, however, preclude regulation of savings and loan holding companies in the territories. The other provisions, noted above, make clear that savings and loan holding companies in the territories are subject to regulation under this chapter.

The applicability of these provisions, all part of section 1730a of title 12, to the territories means that savings and loan holding companies on Guam are subject to regulation under these provisions. By operation of section 502(a) of the Covenant, savings and loan holding companies in the Northern Mariana Islands are also subject to regulation under section 1730a.

Because section 1730a applies differently to Guam than it does to the several States, whether section 1730a is a federal banking law becomes important. Federal banking laws apply to the Northern Mariana Islands as they do to Guam. Covenant § 502(a)(1). Other laws applicable to Guam and the several States apply to the Northern Mariana Islands as they do to the several States. Id. § 502(a)(2). Savings and loan associations are sufficiently akin to banks to require federal laws regulating them to be considered federal banking laws. Accordingly, section 1730a applies to the Northern Mariana Islands as it does to Guam, and the Northern Mariana Islands is not a "State" for purposes of that section.

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*But a regulated holding company could control insured savings and loan institutions in a State and in one or more territories.

Accounts established by various governmental officers, employees, and agents lawfully investing public funds in insured institutions, for purposes of determining whether the amount of the account exceeds the maximum insurable amount, are treated as separate from other accounts established by other officers, employees, or agents of the same government. 12 U.S.C. § 1724(b). The enumerated governments, however, do not include the Northern Mariana Islands, either directly or by operation of the Covenant.* Legislation is proposed in this report to add the Northern Mariana Islands to the list of governments entitled to establish separately insured accounts. See the recommendation, Insurance of "public unit" accounts in federally-insured savings and loan associations, in the Recommendations section of this report.

Subchapter V. Miscellaneous.

The statutes.

This subchapter, title V of the National Housing Act, as its title indicates, contains a variety of generally unrelated provisions: Multifamily housing built with the aid of federally insured mortgages may not be used for transient or hotel purposes. 12 U.S.C. § 1731b. A General Insurance Fund is established to carry out the mortgage insurance provisions of chapter 13. Id. § 1735c. State usury laws are made inapplicable to federally insured mortgages. Id. § 1735f-7. Mortgage relief is authorized for homeowners unemployed as a result of a closing of a federal installation. Id. § 1735g.

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*Section 1728(d)(1)(iv) of title 12 specifies a $100,000 per account maximum insurable amount for public-funds accounts maintained by officers, employees, or agents of any territory or possession in an insured institution in that territory or possession. Since Guam is a territory or possession, by operation of section 502(a) of the Covenant, the $100,000 maximum applies to public-funds accounts maintained by officers, employees, or agents of the Northern Mariana Islands at insured institutions within the Northern Mariana Islands. Section 1728(d)(1)(iv) does not explicitly allow such accounts to be treated separately from other accounts established by other officers, employees, or agents of the Northern Mariana Islands for purposes of determining whether funds on deposit exceed the maximum insurable amount. Further, section 1728(d)(1)(iv) applies only to Northern Mariana Islands public accounts maintained at insured institutions within the Northern Mariana Islands. Section 1724(b), if made applicable to Northern Mariana Islands public accounts, would permit those accounts to be maintained at an insured institution within the Northern Mariana Islands or anywhere else in the United States.

Present applicability.

Despite their diversity, the provisions in this subchapter fall in one of two categories. Either they are applicable only if a federally insured mortgage has already been secured or they pertain to the Federal Government's administration of mortgage insurance programs. In the former case, applicability in the Northern Mariana Islands is determined by the availability of particular federal mortgage insurance programs in the Northern Mariana Islands, a question here treated in the discussions of those programs. In the latter case, whether the provisions are applicable to the Northern Mariana Islands is without significance, since they pertain to the internal operations of the Federal Government.

Subchapter VI. War Housing Insurance.

This subchapter, title VI of the National Housing Act, authorized the FHA to insure mortgages for war workers for various periods between 1941 and 1954. Although the subchapter defines "State" to include Guam and thus--by operation of section 502(a) of the Covenant--the Northern Mariana Islands, 12 U.S.C. § 1736(d), the authority to insure new mortgages expired August 2, 1954. Id. § 1746a. The subchapter remains in the Code presumably because some mortgages insured thereunder have not yet matured.

Subchapter VII. Insurance for Investments in Rental Housing for Families of Moderate Income.

The statutes.

This subchapter, title VII of the National Housing Act, was enacted to

> supplement existing systems of mortgage insurance and to encourage equity investment in rental housing at rents within the capacity of families of moderate income. The Federal Housing Administrator is authorized to insure and make commitments to insure the minimum annual organization charge and an annual return on the outstanding investment made in eligible projects under this title.
>
> Any natural person, company, corporation, and any group containing not more than ten natural persons is eligible for insurance under title VII. These contracts of insurance can be terminated at any time by the Administrator and, after written notice, by the investor at the close of any operating year.

Federal Banking Law Reporter (CCH) 1573. See also 12 U.S.C. § 1747.

Present applicability.

"State" is defined, for purposes of this subchapter, to include Guam. 12 U.S.C. § 1747l(q). By operation of section 502(a) of the Covenant, the Northern Mariana Islands is also a State for purposes of the subchapter. Although the subchapter does not otherwise define the areas in which this insurance program is available, the definition of "State" to include particular jurisdictions is strong evidence of congressional intent that the program be available in those jurisdictions. Rubenstein v. United States, 153 F.2d 127, 129 (D.C. Cir. 1946). Accordingly, the insurance program authorized by this subchapter is available in the Northern Mariana Islands.

Subchapter VIII. Armed Services Housing Mortgage Insurance.

The statutes.

This subchapter, title VIII of the National Housing Act, authorizes federal mortgage insurance for construction of housing for military personnel and their dependents near military installations. The Secretary of Housing and Urban Development may provide insurance without regard to normal considerations of economic risk if it is shown that the housing is necessary, that the military installation is permanent, and no substantial curtailment of operations at the installation is presently intended. See Federal Banking Law Reporter (CCH) 1573.

Present applicability.

"State" is defined, for purposes of this subchapter, to include Guam. 12 U.S.C. § 1748(g). By operation of section 502(a) of the Covenant, the Northern Mariana Islands is also a State for purposes of the subchapter. As with the previous subchapter, the definition of "State" to include particular jurisdictions is strong evidence of congressional intent that the program be available in those jurisdictions. Accordingly, the insurance program authorized by this subchapter is available in the Northern Mariana Islands.

Subchapter IX. Housing for Educational Institutions.

The statutes.

This subchapter, originally enacted as title IV of the Housing Act of 1950, authorizes federal loans and grants to institutions of higher education for construction or purchase of housing and other facilities for students and faculties.

Present applicability.

"State" is defined, for purposes of this subchapter, to include the Territories and possessions of the United States. 12 U.S.C. § 1749c(e). Guam is a Territory or possession of the United States. By operation of section 502(a) of the Covenant, the Northern Mariana Islands is also a State for purposes of the subchapter. As with the two preceding subchapter, the definition of "State" to include particular jurisdictions is strong evidence of congressional intent that the program be available in those jurisdictions. Accordingly, the loan and grant program authorized by this subchapter is available in the Northern Mariana Islands.

Subchapter IX-A. Mortgage Insurance For Land Development and New Communities.

The statutes.

This subchapter, title X of the National Housing Act, authorizes federal mortgage insurance on property purchased for residential developments and new communities.

Although the subchapter defines "State" to include Guam and thus--by operation of section 502(a) of the Covenant--the Northern Mariana Islands, 12 U.S.C. § 1749aa(c), the authority to insure new mortgages expires September 30, 1985. Id. § 1749bb(a).

Present applicability.

"State" is defined, for purposes of this subchapter, to include Guam. 12 U.S.C. § 1749aa(c). Accordingly, by operation of section 502(a) of the Covenant, the Northern Mariana Islands is also a State for purposes of the subchapter. As with the preceding subchapters, the definition of "State" to include a particular jurisdiction is strong evidence of congressional intent that the program be available in that jurisdiction. Accordingly, the mortgage insurance program authorized by the this subchapter is available in the Northern Mariana Islands.

Subchapter IX-B. Mortgage Insurance For Group Practice Facilities and Medical Practice Facilities.

The statutes.

This subchapter, title XI of the National Housing Act, authorizes federal insurance on mortgages for the construction and

equipping of group medical, optometric, or dental practice facilities.

Present applicability.

"State is defined, for purposes of this subchapter, to include Guam. 12 U.S.C. § 1749aaa-5(6). Accordingly, by operation of section 502(a) of the Covenant, the Northern Mariana Islands is also a State for purposes of the subchapter. As with the preceding subchapters, the definition of "State" to include a particular jurisdiction is strong evidence of congressional intent that the program be available in that jurisdiction. Accordingly, the mortgage insurance program authorized by this subchapter is available in the Northern Mariana Islands.

Subchapter IX-C. National Insurance Development Program.

This subchapter, title XII of the National Housing Act, authorizes federal insurance and reinsurance against risks associated with riots and civil disorders. The subchapter defines "State" to include "the territories and possessions" and, thus, Guam. 12 U.S.C. § 1749bbb-2(a)(14). Accordingly, by operation of section 502(a) of the Covenant, "State" also includes the Northern Mariana Islands. Authority to issue new contracts of insurance or reinsurance expires September 30, 1985, although existing insurance and reinsurance may be continued until September 30, 1986. 12 U.S.C. § 1749bbb(b)(1).

Subchapter X. National Defense Housing Insurance.

The statutes.

This subchapter, title IX of the National Housing Act, supplements other federal mortgage insurance programs in areas determined by the President to be critical defense housing areas.

Present applicability.

"State" is defined, for purposes of this subchapter, to include Guam. 12 U.S.C. § 1750. By operation of section 502(a) of the Covenant, the Northern Mariana Islands is also a State for purposes of the subchapter. Although the subchapter does not otherwise define

the areas in which this insurance program is available, the definition of "State" to include particular jurisdictions is strong evidence of congressional intent that the program be available in those jurisdictions. Rubenstein v. United States, 153 F.2d 127, 129 (D.C. Cir. 1946). Accordingly, the mortgage insurance program authorized by this subchapter is available in the Northern Mariana Islands.

Subchapter XI. Voluntary Home Mortgage Credit.

The provisions of this subchapter are obsolete and are omitted from the current United States Code.

Chapter 14. Federal Credit Unions.

The statutes.

A credit union is a

> financial cooperative which aids its members by encouraging thrift and by providing members with a source of credit for provident purposes at reasonable rates of interest. Federal credit unions serve occupational, associational, and residential groups, thus benefiting a broad range of citizens throughout the country.

U.S. Government Manual 554 (1982). The principal difference between a credit union, on the one hand, and banks or savings and loan associations, on the other, is that voting control of a credit union is based on the principle of one person, one vote and not on the number of shares owned.

Federal credit unions are chartered by the National Credit Union Administration (NCUA).* The NCUA regulates and insures deposits in all federally chartered credit unions and in State chartered credit unions which are insured under the provisions of this chapter.

Present applicability.

Chapter 14 is specifically applicable to "the several Territories, including the trust territories, and possessions of the United States." 12 U.S.C. § 1772. See also id. §§ 1752(6), (9); 1768; 1771; 1781(a); 1785(f)(2), (g)(1). Guam is a Territory or possession of the United States. Accordingly, by operation of

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*Credit unions may also be chartered by State governments.

section 502(a) of the Covenant, chapter 14 is applicable to the Northern Mariana Islands.*

Chapter 16. Federal Deposit Insurance Corporation.

The statutes.

The Federal Deposit Insurance Corporation (FDIC) was established in 1933 to insure deposits in banks within and without the Federal Reserve System. The FDIC is to

> insure the deposits of all banks which are entitled to the benefits of insurance under the law. The major functions of the Corporation are to pay off the depositors of insured banks closed without adequate provision having been made to pay claims of their depositors, to act as receiver for all national banks placed in receivership and for state banks placed in receivership when appointed receiver by state authorities, and to prevent the continuance or development of unsafe and unsound banking practices. The Corporation may also make loans to, or purchase assets from, the insured banks when such loans or purchases will facilitate a merger or consolidation and will reduce the probable loss to the Corporation.

Federal Banking Law Reporter (CCH) 1551. See also U.S. Government Manual 486-87 (1982).

Present applicability.

Accounts in banks on Guam are entitled to deposit insurance under this chapter. 12 U.S.C. § 1813(a), (d), (e). By operation of section 502(a)(1) of the Covenant, accounts in the Northern Mariana Islands are also entitled to deposit insurance.

State banks (including banks in Guam and the Northern Mariana Islands), insured by the FDIC but not members of the Federal Reserve System, are permitted, with the consent of the FDIC, to acquire ownership interests in banks located in foreign countries or in "dependencies or insular possessions of the United States." Id.

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*The NCUA is given authority to exchange information on State chartered credit unions with State regulatory authorities. 12 U.S.C. § 1784(d). The NCUA has defined "State" to include "Territories and possessions." 12 C.F.R. § 700.1(g) (1985). Under section 502(a)(2) of the Covenant, the NCUA's authority extends to exchanges of information with Northern Mariana Islands regulatory authorities regarding credit unions chartered by the Northern Mariana Islands.

§ 1828(l).* (Insured State banks are otherwise severely restricted in their ability to acquire ownership interests in banks in other States. Id. § 1842(d).)

Discussion.

Deposits in banks in the Northern Mariana Islands have been insured by the FDIC since well before the negotiation of the Covenant. The Northern Mariana Islands, like other less economically developed areas, lacks capital. FDIC insurance of deposits in local banks encourages savings and, thus, capital formation.

Chapter 17. Bank Holding Companies.

The statutes.

A bank holding company is any firm which controls a bank or another bank holding company. 12 U.S.C. § 1841(a)(1). This chapter encourages competition in the banking industry by limiting the ability of firms to become bank holding companies, by restricting the acquisition of other banks by bank holding companies, by controlling mergers or consolidations of bank holding companies, and by circumscribing the nonbanking activities of bank holding companies.** Id. §§ 1842, 1843. A bank holding company is generally prohibited from acquiring a bank in a State other than the State in which the holding company's banking subsidiary is operating. Id. § 1842(d)(1).

Present applicability.

"Bank" is defined, for purpose of chapter 17, to include banks organized under the laws of Guam. 12 U.S.C. § 1841(c). By operation of section 502(a) of the Covenant, banks in the Northern Mariana Islands are also subject to this chapter.

Chapter 18. Bank Service Corporations.

The statute.

This chapter authorizes two or more insured banks or other

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*Banks organized in the Northern Mariana Islands, however, are treated as foreign banks covered by rules governing the operation of foreign banks within the fifty States and the District of Columbia. 12 C.F.R. parts 346, 347 (1984). See also the Commission's recommendation, Northern Mariana Islands banks' participation in domestic markets, in the Recommendaitons section of this report.

**Recently enacted legislation allows bank holding companies to invest in export trading companies. Public Law 97-290, § 102(b), 96 Stat. 1233 (1982).

depository institutions to form bank service corporations to perform clerical, statistical, bookkeeping, accounting, and other services without violating Federal limitations on collaborative activity by two or more banks or depository institutions. (Federal limitations barring such collaboration include those imposed by sections 24, 84, 335, and 1845 of title 12. Senate Report 2105, 87th Cong., 2d Sess., reprinted at 1962 U.S. Code Cong. & Ad. News 3878, 3882.)

Present applicability

The banks and other depository institutions eligible to form bank service corporations are those banks insured by the Federal Deposit Insurance Corporation and those institutions subject to examination by the Federal Home Loan Bank Board or the National Credit Union Administration Board. 12 U.S.C. § 1861(b)(4), (5), as amended by Public Law 97-320, § 709, 96 Stat. 1469, 1541 (October 15, 1982). Qualified banks and depository institutions in the Northern Mariana Islands accordingly may form bank service corporations.

Chapter 19. Security Measures for Banks and Savings and Loan Associations.

The statutes.

This chapter requires federal supervisory agencies to establish minimum standards for security against robberies, burglaries, and larcenies for national banks, District of Columbia banks, Federal Reserve banks, State banks that are members of the Federal Reserve System, nonmember State banks insured by the Federal Deposit Insurance Corporation, federal savings and loan associations, and other institutions insured by the Federal Savings and Loan Insurance Corporation.

Present applicability.

The minimum security standards established pursuant to this chapter are applicable to any bank or savings and loan institution in the categories named in the chapter, regardless of its location. Accordingly, each bank or savings and loan institution in the Northern Mariana Islands that is within those categories must comply with the minimum security standards applicable to its category. See 12 C.F.R. §§ 216.0, 216.1, 326.1 (1984); id. § 563a.1 (1985).

Chapter 21. Financial Recordkeeping.

The statutes.

This chapter allows the Secretary of the Treasury to impose recordkeeping and reporting requirements on uninsured banks and other uninsured financial institutions.

Present applicability.

The Secretary has defined "United States," for purposes of the requirements imposed under authority of this chapter to include the territories and possessions of the United States. 31 C.F.R. § 103.11 (1984).* Guam is a territory or possession of the United States. By operation of section 502(a) of the Covenant, banks and financial institutions within the Northern Mariana Islands are subject to the Secretary's recordkeeping and reporting requirements.**

Chapter 22. Tying Arrangements.

The statutes.

"Tying arrangements" are anticompetitive practices requiring a customer, in order to obtain a desired product or service, also to accept from (or provide to) the vendor another product or service or to refrain from dealing with other vendors. This chapter prohibits a bank from conditioning banking services, particularly the extension of credit, on the customer's promise to accept (or provide) some other product or service or to refrain from dealing with the bank's competitors.

Present applicability.

"Bank" is defined, for purposes of chapter 22, to include banks organized under the laws of Guam. 12 U.S.C. §§ 1841, 1971. Accordingly, by operation of section 502(a) of the Covenant, banks in the Northern Mariana Islands are also subject to this chapter's prohibitions against tying arrangements. The definition of "bank" also includes banks organized under the laws of the United States, so that federally-chartered banks in the Northern Mariana Islands, too, are subject to this chapter's prohibitions.

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*See also section 1954 of title 12, authorizing the Secretary to enforce this chapter "in the proper United States court of any territory or other place subject to the jurisdiction of the United States."

**The Secretary's authority under this chapter is particularly noteworthy in light of statements made to the effect that "off-shore" banks in the Northern Mariana Islands are beyond the reach of federal regulatory authorities. See Fialka, Tax-Haven Promoter, Selling Banks in the Pacific, Draws Official Interest, Wall Street Journal, February 8, 1983, at 1.

Chapter 23. Farm Credit System.

Chapter 28 is discussed, together with chapters 7, 7A, and 7B, in the recommendation, Farm Credit System, in the Recommendations section of this report.*

Chapter 24. Federal Financing Bank.

The statutes.

This chapter establishes the Federal Financing Bank to coordinate borrowing activities by the Federal Government and federally assisted programs with national fiscal and debt management policies.

Present applicability.

The activities of the Federal Financing Bank are part of the internal management of the Federal Government. Whether the law creating the Federal Financing Bank is applicable to the Northern Mariana Islands is thus of no significance. The Bank's obligations, it may be noted, are acceptable security for the deposit or investment of public funds by any territory or possession of the United States. 12 U.S.C. § 2288(d).**

Chapter 25. National Commission on Electronic Fund Transfers.

This chapter established a National Commission on Electronic Fund Transfers to study and to recommend administrative or legislative action with respect to the development of electronic fund transfer systems.*** The Commission made its final report in 1977 and is no longer in existence. 12 U.S.C. § 2403(b); Senate Report 95-515, at 3 (1978).

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*Chapters 8 and 10 of title 12, separately discussed earlier, also govern aspects of the farm credit system.

**In addition, the Bank has been given a specific role in connection with guaranteeing the purchase of certain bonds of the Guam Power Authority. 48 U.S.C. § 1423a.

***This chapter is not to be confused with sections 1693 et seq. of title 15, United States Code, which regulate some aspects of electronic fund transfers.

Chapter 26. Disposition of Abandoned Money Orders and Traveler's Checks.

Chapter 26 is discussed in the Commission's recommendation, Escheat of abandoned money orders and traveler's checks, in the Recommendations section of this report.

Chapter 27. Real Estate Settlement Procedures.

The statutes.

This chapter prescribes certain settlement procedures applicable to all real estate transactions involving federally related mortgage loans and prohibits kickbacks and other specified fees and charges.

Present applicability.

This chapter does not specifically define its geographic reach, although it is intended to apply to "all transactions in the United States which involve federally related mortgage loans." See 12 U.S.C. § 2603. The Secretary of Housing and Urban Development is given authority, in preparing informational booklets, to consider differences in real estate settlement procedures "among the several State and territories of the United States." Id. § 2604(b). Further, the Secretary has broad authority to make rules and regulations implementing this chapter. Id. § 2617(a). The Secretary has defined "federally related mortgage loans" to include those made to finance the acquisition of property in any territory or possession of the United States. 24 C.F.R. §§ 3500.2(h), 3500.5(b)(3) (1984). Since Guam is a territory or possession, by operation of section 502(a) of the Covenant, real estate settlement transactions involving federally-related mortgage loans in the Northern Mariana Islands are subject to this chapter.

Chapter 28. Emergency Mortgage Relief.

This chapter established a mechanism for emergency relief to homeowners to prevent mortgage foreclosures and distress sales during the 1975 recession. Authority for credit insurance and emergency mortgage relief payments pursuant to the chapter expired in 1977. 12 U.S.C. § 2708(b). The chapter remains on the books presumably because some obligations incurred under the chapter have not yet been repaid.

Chapter 29. Home Mortgage Disclosure.

The statutes.

This chapter requires depository institutions in standard metropolitan statistical areas to disclose to the public information

on mortgage loans made so that citizens and public officials can determine whether those institutions are serving the housing needs of the communities and neighborhoods in which they are located.

The requirements of this chapter expire in 1985, unless extended. 12 U.S.C. § 2811.

Present applicability.

The chapter does not define its geographic reach. The Board of Governors of the Federal Reserve System, however, is given broad authority to prescribe regulations implementing the chapter. 12 U.S.C. § 2804(a). The Board has defined "State" in its regulations to include only the fifty States, the District of Columbia, and Puerto Rico. 12 C.F.R. § 203.2(g) (1984). The Board's definition implies that the regulations do not apply elsewhere.

The chapter applies only to depository institutions within standard metropolitan statistical areas. The Northern Mariana Islands is not now nor soon likely to be within such an area. The chapter accordingly may be regarded as inapplicable to depository institutions in the Northern Mariana Islands.

Chapter 30. Community Reinvestment.

The statutes.

This chapter requires the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board to evaluate the record of each financial institution under their supervision in meeting the credit needs of the institution's entire community, including low- and moderate-income neighborhoods. Each of the supervisory agencies is also required to take that record into account in determining whether an institution is qualified to receive certain privileges or approvals from the agency.

Present applicability.

This chapter applies to all financial institutions regulated by the various federal supervisory agencies, without regard to their location. As discussed earlier, the jurisdiction of each of these agencies extends to the Northern Mariana Islands. 12 U.S.C. § 2902(2). Accordingly, federally-regulated financial institutions in the Northern Mariana Islands are subject to the provisions of this chapter.

Chapter 31. National Consumer Cooperative Bank.

Chapter 31 is discussed in the Commission's recommendation, National Consumer Cooperative Bank, in the Recommendations section of this report.

Chapter 32. Foreign Bank Participation in Domestic Markets.

Chapter 32 is discussed in the Commission's recommendation, Northern Mariana Islands banks' participation in domestic markets, in the Recommendations section of this report.

Chapter 33. Depository Institution Management Interlocks.

Chapter 33 is discussed in the Commission's recommendation, Depository Management Interlocks Act, in the Recommendations section of this report.

Chapter 34. Federal Financial Institutions Examination Council.

The statutes.

This chapter establishes

> a Financial Institutions Examination Council [to] prescribe uniform principles and standards for the Federal examination of financial institutions by the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Board of Governors of the Federal Reserve System, the Federal Home Loan Bank Board, and the National Credit Union Administration . . . .

12 U.S.C. § 3301.

Present applicability.

This chapter establishes one federal entity, the Federal Financial Institutions Examination Council, to prescribe standards for other federal entities, the various financial institutions regulatory agencies. The standards prescribed will affect financial institutions in the Northern Mariana Islands to the extent those institutions are supervised by the regulatory agencies. The jurisdiction of each of the financial institutions regulatory agencies extends to the Northern Mariana Islands. See the earlier discussions of chapter 1 (Comptroller of the Currency); chapter 3 (Board of Governors of the Federal Reserve System); chapter 11 (Federal Home Loan Bank Board); chapter 14 (National Credit Union Administration); and chapter 16 (Federal Deposit Insurance Corporation).

Chapter 35. Right to Financial Privacy.

Chapter 35 is discussed in the Commission's recommendation, Right to financial privacy, in the Recommendations section of this report.

Chapter 36. Depository Institutions Deregulation and Financial Regulation Simplification.

The statutes.

This chapter contains the Depository Institutions Deregulation Act and the Financial Regulations Simplification Act. The former provides

> for the orderly phase-out and the ultimate elimination of the limitations on the maximum rates of interest and dividends which may be paid on deposits and accounts by depository institutions by extending the authority to impose such limitations for 6 years, subject to specific standards designed to ensure a phase-out of such limitations to market rates of interest.

12 U.S.C. § 3501(b). A Depository Institutions Deregulation Committee was created to do this.

The Financial Regulation Simplification Act requires federal financial regulatory agencies periodically to review their regulations, with the purpose of simplifying and updating them.

This chapter "deregulates" banks and other depository institutions, allowing them greater freedom in the services they can provide and, most importantly, in the rates of interest they can charge. Regulatory actions in December 1982 and January 1983 freed depository institutions of restrictions on the kinds of accounts they may offer and promised consumers increased access to high yield savings and checking services through federally insured accounts.

Present applicability.

The Depository Institutions Deregulation Committee established by this chapter is given authority to regulate interest rates and classes of deposits or accounts. The Board of Governors of the Federal Reserve System, the Federal Home Loan Bank Board, and the Federal Deposit Insurance Corporation formerly held this authority. 12 U.S.C. § 3502(a). The supervisory authority of each of those regulatory agencies extends to depository institutions in the Northern Mariana Islands. See the discussions of chapter 3, 11, and 16, above. As noted in the discussion of chapter 3, however, the Board of Governors of the Federal Reserve System, while having

general supervisory authority over member banks in the Northern Mariana Islands, does not have authority to regulate interest paid by those banks on time and savings deposits. 12 U.S.C. § 371b.

The portion of this chapter containing the Financial Regulation Simplification Act governs the internal conduct of the federal financial regulatory agencies. Simplification and updating of regulations affects the Northern Mariana Islands to the extent the regulations undergoing revision apply to financial institutions in the Northern Mariana Islands.

Discussion.

Because the Board of Governors of the Federal Reserve System did not have authority to regulate interest paid by member banks in the Northern Mariana Islands, neither does the Depository Institutions Deregulation Committee now have that authority. There is no good reason to enact legislation allowing the Depository Institutions Deregulation Committee to regulate interest paid on time and savings deposits by banks in the Northern Mariana Islands that are members of the Federal Reserve System. The thrust of the Depository Institutions Deregulation Act is toward removal of governmental restrictions on interest rates that financial institutions may pay. Granting the Committee authority to regulate where no authority previously existed would be contrary to the purposes of that Act.

Chapter 37. Solar Energy and Conservation Bank.

The statutes.

This chapter creates the Solar Energy and Energy Conservation Bank to provide loans and other financial assistance to encourage the use of solar energy systems and energy conserving improvements.

Present applicability.

The Solar Energy and Energy Conservation Bank is given the same powers as are given to the Government National Mortgage Association (GNMA) by section 1723a(a) of title 12. 12 U.S.C. § 3603(a). Section 1723a(a) gives the GNMA authority to conduct business in any "Territory or possession" of the United States and, thus, by operation of section 502(a) of the Covenant, in the Northern Mariana Islands. See the earlier discussion of subchapter III of chapter 13. Accordingly, the Solar Energy and Energy Conservation Bank is authorized to conduct business in the Northern Mariana Islands.

Discussion.

The bylaws of the Solar Energy and Energy Conservation Bank allow the Bank to conduct business only in the fifty States, the

District of Columbia, Puerto Rico, and the Territories and possessions. 24 C.F.R. § 1895.1 (1984) (Bylaws § 2.01). The bylaws by their own terms thus, contrary to the statute, do not allow the Bank to conduct business in the Northern Mariana Islands. Because the bylaws were adopted after January 9, 1978, section 502(a) of the Covenant does not operate to allow the Bank to conduct business in the Northern Mariana Islands.*

Because of a small population, allowing few economies of scale, and an isolated location, making transportation costs high, energy is expensive in the Northern Mariana Islands. Energy conservation improvements in the Northern Mariana Islands are thus likely to be especially cost-effective. The tropical location of the Northern Mariana Islands makes solar energy systems particularly attractive in principle.

No legislation is required to allow the Solar Energy and Energy Conservation Bank to conduct business in the Northern Mariana Islands, since it presently has statutory authority to do so. The Bank should be encouraged, however, to amend section 2.01 of its bylaws to allow it to conduct business in the Northern Mariana Islands.

Chapter 38. Multifamily Mortgage Foreclosure.

The statutes.

This chapter establishes a uniform federal procedure to replace disparate State laws governing foreclosure by the Secretary of Housing and Urban Development of certain federally-insured multifamily mortgages.

Present applicability.

This chapter applies to the specified types of mortgages "located in any State." 12 U.S.C. § 3703. "State" is defined to include "the territories and possessions of the United States" and "the Trust Territories of the Pacific Islands." Id. § 3702(8).

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*This result is almost certainly inadvertent. The language in the Bank's bylaws is identical to the statutory language listing the jurisdictions in which the GNMA can conduct business and, thus, appears to comport with the Bank's statutory authority to conduct business wherever the GNMA conducts business. Not taken into account, however, is the expansion of GNMA's authority, by operation of section 502(a) of the Covenant, to allow it to conduct business in the Northern Mariana Islands.

Until termination of the trusteeship, the Northern Mariana Islands is part of the Trust Territory of the Pacific Islands and, thus, a "State" within this definition. After termination of the trusteeship, the Northern Mariana Islands will be a territory or possession of the United States and still a "State" within the definition. Accordingly, foreclosure on the specified types of mortgages within the Northern Mariana Islands is governed by the provisions of this chapter.

Adjustable-rate mortgage loans are used to finance housing pursuant to an agreement allowing the lender to adjust the rate of interest from time to time. Federally chartered financial institutions, by regulations issued prior to enactment of this chapter, are permitted to make adjustable-rate mortgage loans. This chapter allows nonfederally chartered financial institutions also to make adjustable-rate mortgage loans in conformity with federal regulations and nullifies any State law that would prohibit them from making such loans.

Present applicability.

Chapter 39 does not specifically define its geographic applicability. The chapter is applicable to "housing creditors," however, and "housing creditor" is defined to include any mortgage lender that is a financial institution, as defined in the Depository Institutions Deregulation and Monetary Control Act (chapter 36, above), or any lender approved by the Secretary of Housing and Urban Development (HUD) for participation in any mortgage insurance program under the National Housing act (chapter 13, above). 12 U.S.C. §§ 3802(2), 3803(a). Both the Depository institutions Deregulation and Monetary Control Act and the National Housing Act apply in the Northern Mariana Islands. Accordingly, any qualified financial institution or HUD-approved mortgage lender in the Northern Mariana Islands may make adjustable-rate mortgage loans, whether or not it is federally chartered. Further, no law of the Northern Mariana Islands may restrict or forbid the making of adjustable-rate mortgage loans.*

*But see 12 C.F.R. § 29.2 (1985).

TITLE 13. CENSUS.

The Commission did not examine chapters 1, 3, 5, or 7* of this title of the United States Code in detail. No problems in the application of these chapters to the Northern Mariana Islands were brought to the Commission's attention.

Chapter 9. Collection and Publication of Foreign Commerce and Trade Statistics.

The statutes.

This chapter, sections 301 et seq. of title 13, authorizes the Secretary of Commerce to collect, compile, and publish foreign trade statistics, in order to promote the domestic and foreign commerce of the United States.

> The foreign trade statistics program, conducted by the Bureau of the Census, involves the compilation and dissemination of a large body of data relating to the imports and exports of the United States. These statistics are designed to serve the needs of both government and

*There are no even-numbered chapters in title 13.

> nongovernment users who have a wide range of interests. The program, therefore, includes a variety of data presented in many different arrangements and released in the form of reports which are available by subscription and in reports and machine tabulations which are distributed to Department of Commerce field offices and U.S. Customs Service offices for public reference use.

U.S. Department of Commerce, Bureau of the Census, Guide to Foreign Trade Statistics 1 (1979). An important means for collection of these statistics is the Shipper's Export Declaration. See 15 C.F.R. part 30 (1985).

The Secretary has broad authority to issue regulations to carry out the provisions of this chapter. 13 U.S.C. §§ 4, 302, 307.

Present applicability.

Section 301 of title 13 authorizes the Secretary of Commerce to collect information "from all persons exporting from, or importing into, the United States and the noncontiguous areas over which the United States exercises sovereignty, jurisdiction, or control." Collection of such information from persons engaged in trade between the United States and the noncontiguous areas, or between the noncontiguous areas is also authorized. Guam is a noncontiguous area

over which the United States exercises sovereignty, jurisdiction, and control.* Collection of information is thus authorized with respect to goods moving (1) between foreign countries and the United States, including Guam and other noncontiguous areas; (2) between the United States, on the one hand, and Guam and the other noncontiguous areas, on the other; and (3) between Guam and the other noncontiguous areas.

Section 502(a)(2) of the Covenant makes applicable to the Northern Mariana Islands federal laws "which are applicable to Guam and which are of general application to the several states." The Secretary of Commerce's authority under chapter 9 applies to importers and exporters in both Guam and the several States, as well as to persons trading between Guam and the several States. Accordingly, chapter 9 is also applicable to the Northern Mariana Islands.

The several States and Guam, however, are not subject to the same treatment under chapter 9. The Secretary may collect information on trade between Guam and foreign countries, between the several States and foreign countries, between Guam and the several States, and between Guam or the several States and the other contiguous areas. The Secretary is not authorized, however, to collect information on trade between two States of the United States. Federal laws applicable to Guam and the several States are to be applied to the Northern Mariana Islands as they are applied to the several States. Covenant § 502(a)(2). In what is surely an unintended result of application of the Covenant formula, the Secretary is thus authorized to collect information on trade between the Northern Mariana Islands and foreign countries and on trade between the Northern Mariana Islands and Guam, but not on trade between the Northern Mariana Islands and the several States.**

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*The United States now exercises jurisdiction and control over the Northern Mariana Islands. Trusteeship Agreement, Art. 3. The United States will not exercise sovereignty over the Northern Mariana Islands until termination of the trusteeship. Covenant §§ 101, 1003(c).

**The authority of the Secretary under this chapter extends to the movement of goods in and out of noncontiguous areas that are under the jurisdiction and control, but not the sovereignty, of the United States. The Trust Territory of the Pacific Islands is such an area. Until approval of the Covenant by the United States Congress, the Northern Mariana Islands was subject to this authority as part of the Trust Territory of the Pacific Islands, and thus a noncontiguous area rather than a State for purposes of the chapter. The Covenant, however, makes clear that if a statute is applicable to Guam and the several States, it is to be applied to the Northern Mariana Islands as it is applied to the several States without regard for its prior applicability to the Trust Territory of the Pacific Islands. Compare Covenant § 502(a)(2) with id. § 502(a)(3).

The regulations now in effect under chapter 9 treat the Trust Territory of the Pacific Islands (which, of course, still includes the Northern Mariana Islands) as a foreign country. 15 C.F.R. § 30.1 (a)(1) (1985). Those regulations have been in effect since prior to approval of the Covenant by the United States Congress. To the extent those regulations purport to collect information on trade between the Northern Mariana Islands and the several States, they now exceed the authority granted the Secretary by this chapter.

The regulations themselves have the status of law under section 502(a)(2) of the Covenant. In applying those regulations, the Northern Mariana Islands must be treated as a State. (Note, however, the broad authority of the Secretary to issue regulations implementing chapter 9 allows the Secretary to change the treatment of the Northern Mariana Islands in those regulations, so long as changes do not purport to require information on the flow of goods between the Northern Mariana Islands and the several States.)

Since the Northern Mariana Islands is treated as a State under the regulations:

(1) exporters in the other States (or the District of Columbia) are not required to file Shipper's Export Declarations when sending goods to the Northern Mariana Islands and exporters in the Northern Mariana Islands are not required to file Declarations when sending goods to those other States (15 C.F.R. §§ 30.1, 30.2 (1985));

(2) exporters in Guam and the Virgin Islands are not required to file Shipper's Export Declarations when sending goods to the Northern Mariana Islands (id. § 30.1(a)(2) n.1);*

(3) exporters in the Northern Mariana Islands are required to file Shippers Export Declarations when sending goods to foreign countries, including other parts of the Trust Territory of the Pacific Islands (id. § 30.1(a)(1)(i));

(4) importers in the United States are not required by these regulations to provide information on goods received from the Northern Mariana Islands, although most of the same information is required by Customs regulations (id. § 30.70 & n. 9);

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*But exporters in Puerto Rico must file the Declaration when sending goods to the Northern Mariana Islands. 15 C.F.R. § 30.1(a)(2)(ii) (1985).

(5) importers in the Northern Mariana Islands must provide information on goods entering the Northern Mariana Islands from foreign countries (including the Trust Territory of the Pacific Islands) and from Guam and other noncontiguous areas on specified United States Customs forms (id. § 30.70); and

(6) importers in the Northern Mariana Islands are not required by these regulations to provide information on goods entering the Northern Mariana Islands from the fifty States, the District of Columbia, or Puerto Rico (id.).

Discussion.

The Northern Mariana Islands should be treated for purposes of chapter 9 like Guam and the other noncontiguous areas of the United States, not like a State. Like Guam, the Northern Mariana Islands is outside the United States customs territory. General Headnote 2 to the Revised Tariff Schedules of the United States; Covenant § 603(a). Goods must be identified when they move across customs borders, so those borders are convenient points for the collection of statistics.

If the current regulations remain in effect but the Northern Mariana Islands is treated as is Guam, then:

(1) exporters in the United States, including Guam and other noncontiguous areas, will not be required to file Shipper's Export Declarations when sending goods to the Northern Mariana Islands (15 C.F.R. §§ 30.1(a)(1), 30.1(a)(2) n.1 (1985));

(2) exporters in the Northern Mariana Islands will be required to file Shipper's Export Declarations when sending goods to foreign countries, including other parts of the Trust Territory of the Pacific Islands (id. § 30.2(a));

(3) exporters in the Northern Mariana Islands will not be required to file a Shipper's Export Declaration when sending goods to the United States (including Puerto Rico, Guam, and other noncontiguous areas) (id. § 30.1(a)(2) n.1);

(4) importers in the United States will be required to provide information on goods from the Northern Mariana Islands on specified United States Customs forms (id. § 30.70(a));

(5) importers in the Northern Mariana Islands will generally be required to furnish the government of the Northern Mariana Islands with a commercial invoice and bill

of lading or air waybill describing imported goods before they may take possession of those goods (id. § 30.81(b)); and

(6) carriers of merchandise to the Northern Mariana Islands will not be permitted to unload before providing the government of the Northern Mariana Islands a manifest describing that merchandise in detail (id. § 30.81(a)).*

Thus, four requirements are unchanged, regardless of whether the Northern Mariana Islands is treated as a State or like Guam:

(1) exporters in the United States (and Guam) are not required to file Shipper's Export Declarations when sending goods to the Northern Mariana Islands;

(2) exporters in the Northern Mariana Islands must file Shipper's Export Declarations when sending goods to any foreign country (including other parts of the Trust Territory of the Pacific Islands);

(3) exporters in the Northern Mariana Islands are not required to file Shipper's Export Declarations when sending goods to the fifty States or the District of Columbia; and

(4) importers in the United States must provide information on goods from the Northern Mariana Islands on United States Customs forms (although the authority for requiring such information differs depending on whether the Northern Mariana Islands is treated as a State or like Guam).

If the Northern Mariana Islands is treated like Guam rather than as a State, then:

(1) importers in the Northern Mariana Islands will not be required to provide information on goods entering

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*Thus, federal regulations (which are well within the Secretary's broad rulemaking authority) require that carriers of merchandise to Guam and importers on Guam provide information to the government of Guam. According to information provided Commission staff by a Bureau of the Census official, the government of Guam requested that federal regulations be issued on the premise that federal regulations would be easier to enforce than local regulations.

the Northern Mariana Islands from foreign countries on United States Customs forms, but will be required to provide the government of the Northern Mariana Islands with a commercial invoice and bill of lading or air waybill before taking possession of those goods; and

(2) carriers of merchandise into the Northern Mariana Islands will be required to provide the government of the Northern Mariana Islands a detailed manifest describing that merchandise before loading it.

TITLE 14. COAST GUARD.

The Commission did not examine this title of the United States Code in detail. In its recommendation, Surveillance of ocean areas, in the Recommendations section of this report, the Commission recommends increased Coast Guard efforts to patrol ocean areas adjacent to the Northern Mariana Islands. No other problems in the application of this title to the Northern Mariana Islands were brought to the Commission's attention.

TITLE 15. COMMERCE AND TRADE.

Title 15 collects a wide variety of federal statutes dealing with commerce and trade. Not all federal statutes affecting commerce and trade are found in title 15. Many provisions of, for example, title 21, Food and Drugs; title 26, the Internal Revenue Code; title 46, Shipping; and title 49, Transportation, are very important to particular segments of the business world.

If title 15 has any central theme, it is that of providing an honest, orderly, safe, and--usually--competitive marketplace. The title includes the federal antitrust laws and the laws against unfair and deceptive competitive practices. The Truth in Lending Act is part of title 15, as are the laws creating the Consumer Product Safety Commission and the Small Business Administration. Title 15 also contains a number of statutes intended to promote research and development in the United States, particularly in the area of energy conservation.

Because of the wide variety of federal statutes collected in title 15, the title is here discussed on a chapter-by-chapter basis.

Note. In the chapter-by-chapter analysis that follows, chapters 2D, 27, 40, and 55 are not discussed. Those chapters are discussed in the recommendations, Investment companies, Automobile Dealers Day in Court Act, Fishery trade officers; Department of Commerce, and Petroleum Marketing Practices Act, respectively, in the

Recommendations section of this report. Similarly, subchapters II, III, and VI of chapter 41 are discussed in the recommendations, Restrictions on garnishment, Fair Credit Reporting Act, and Electronic Funds Transfer Act, in the Recommendations section and are not treated in the analysis below.

Also not discussed are chapters 3, 10, 11, 14, 16, 17, 18, 33, and 35. These chapters have been repealed, omitted as obsolete, or transferred to other parts of the United States Code.

There is no chapter 67 in title 15.

Chapter 1. Monopolies and Combinations in Restraint of Trade.

The statutes.

Chapter 1 contains two of the most important antitrust statutes, the Sherman Antitrust Act of 1890, 15 U.S.C. §§ 1 et seq., and the Clayton Act of 1914, id. §§ 12 et seq. Both are designed to limit the concentration of economic power in the United States by promoting competition. Competition is promoted by imposing legal restraints on monopolies and on the use of unfair trade practices.

The Sherman Antitrust Act makes illegal agreements between two or more persons to restrain trade, for example, by fixing prices to eliminate price competition. Id. § 1. The Sherman Act also makes it illegal for a single person or firm, even in the absence of an agreement with another firm, to monopolize (or attempt to monopolize) trade in particular goods. Id. § 2.

The Clayton Act forbids a firm from acquiring the stock or assets of competing corporations if the acquisition would lessen competition or tend to create a monopoly. Id. § 18. The Clayton Act and its subsequent amendments (principally the Robinson-Patman Act) also prohibit a seller from offering different prices, services, or facilities to different purchasers unless the seller has legitimate economic reasons for doing so. Id. § 13. Firms may not require their customers or suppliers to refrain from also dealing with the firm's competitors, if such a requirement would substantially lessen competition in a particular line of commerce. Id. § 14. Persons injured by violations of the antitrust laws may sue and recover three times their actual damages. Id. § 15. The attorney general of any State may also bring a legal action to recover triple damages from antitrust violators on behalf of the citizens of the State. Id. § 15c.

The Clayton Act differs from the Sherman Act in that it may be used by the Federal Trade Commission (discussed in chapter 2, below) and the courts when a practice does not yet substantially restrain trade but might do so in the future. See J. Van Cise, Understanding the Antitrust Laws 65 (1976).

Present applicability.

The Sherman Antitrust Act and the Clayton Act apply to the Territories and insular possessions as well as the States. See 15 U.S.C. §§ 1, 3, 12. The Supreme Court has held that Congress, in enacting the antitrust laws, intended those laws to apply wherever the power of Congress reaches. United States v. Standard Oil Co., 404 U.S. 558 (1972) (American Samoa); Puerto Rico v. Shell Oil Co., 302 U.S. 253 (1937) (Puerto Rico). See also Norman's on the Waterfront, Inc. v. Wheatley, 317 F. Supp. 247 (D.V.I. 1970), affirmed, 444 F.2d 1011 (3d Cir. 1971) (Virgin Islands).

Guam is an insular possession of the United States and well within the ambit of congressional power. The antitrust laws are consequently applicable to Guam. By operation of section 502(a)(2) of the Covenant, those laws also apply to the Northern Mariana Islands.

The attorney general of the Northern Mariana Islands may bring antitrust actions on behalf of the citizens of the Northern Mariana Islands under the Clayton Act. "State" is defined, for purposes of the provision authorizing suits by State attorneys general, to include the territories and possessions of the United States. 15 U.S.C. § 15g(2). Since Guam is a territory or possession of the United States, the Northern Mariana Islands by operation of section 502(a)(2) of the Covenant is also a "State" for purposes of this provision.

Discussion.

The residents of the Northern Mariana Islands, few in number and distant from alternative suppliers, are particularly vulnerable to anticompetitive practices. The federal antitrust laws should continue to apply to the Northern Mariana Islands for the protection of those residents.

If the antitrust laws were made inapplicable to the Northern Mariana Islands, the Northern Mariana Islands could become a haven for arrangements that would have adverse effects not only on competition and consumers in the Northern Mariana Islands but also on competition and consumers in the United States. Indeed, the current trend is to extend the reach of the antitrust laws to encompass anticompetitive practices and transactions that take place in foreign countries, if those practices or transactions adversely affect competition or consumers within the United States. See Shenefield, The Perspective of the U.S. Department of Justice, in J. Griffin, ed., Perspectives on the Extraterritorial Application of U.S. Antitrust and Other Laws 12, 13 (1979).

Chapter 2. Federal Trade Commission; Promotion of Export Trade and Prevention of Unfair Methods of Competition.

The statutes.

The Sherman Antitrust Act and the Clayton Act, discussed in the treatment of chapter 1, above, are complemented by the Federal Trade Commission Act, 15 U.S.C. §§ 41 et seq. Together, these three laws constitute the principal federal protection for the public against abuses caused by restraint of trade and the exercise of monopoly power.

The Federal Trade Commission Act, contained in chapter 2 of title 15, establishes the Federal Trade Commission (FTC) and charges it with preventing "unfair methods of competition" and "unfair or deceptive acts or practices." Id. §§ 41, 45(a)(1). See generally U.S. Government Manual 510-15 (1982). The principal means used by the FTC to prevent unfair or deceptive commercial practices is the cease-and-desist order. 15 U.S.C. § 45(b). Each violation of such an order is cause for assessment of a civil penalty of up to $10,000. Id. § 45(m).

The FTC may investigate particular businesses to ensure compliance with the antitrust laws, court decrees, and the statutes forbidding unfair trading practices. Id. § 46. The FTC may also issue rules, after providing interested parties opportunity to comment, defining particular trade practices as unfair or deceptive. Id. § 57a.

The FTC has the power to institute legal action to prevent the false advertisement of products. Id. §§ 52-53. The FTC also enforces federal laws requiring wool, fur, and textile products to be properly labelled. Id. §§ 68-70k.

Also included in chapter 2 of title 15 is the Webb-Pomerene Act, 15 U.S.C. §§ 61-66. This Act offers United States firms a limited exemption from federal antitrust laws in carrying on export trade activities.

Chapter 2 also contains the Unfair Competition Act of 1916, 15 U.S.C. §§ 71-77, which regulates the importation of goods into the United States. Section 72, an antidumping statute, prohibits the sale of foreign goods in the United States at less than cost if the sale is made with the intent of injuring American production of the same goods or otherwise restraining trade in those goods in the United States. Section 73 triples the duty on articles imported into the United States under an agreement (other than an exclusive sales agency agreement) that prevents the importer or any other person from using or dealing in the articles of any other person. Section 75 allows the President to prohibit particular imports into the United

States from nations prohibiting particular imports from the United States. Section 76 allows the President, during a war in which the United States is not involved, to prohibit particular imports into the United States from nations prohibiting particular imports from the United States and imposes criminal penalties for violation of any such prohibitions. Section 77 authorizes the President to take certain steps against vessels discriminating against United States commerce or citizens during a war in which the United States is not engaged.

The FTC is also charged with administering and enforcing a number of laws not included in chapters 1 or 2 of title 15. See 16 C.F.R. § 0.4 (1984). Among these laws are the Packers and Stockyards Act, 7 U.S.C. §§ 181 et seq.; the Trade Mark Act, 15 U.S.C. §§ 1051 et seq; the Hart-Scott-Rodino Antitrust Improvements Act of 1976, id. § 1311; the Federal Cigarette Labeling and Advertising Act, id. §§ 1331 et seq.; the Fair Packaging and Labeling Act, id. §§ 1451 et seq.; the Truth in Lending Act, id. §§ 1601 et seq.; the Fair Credit Billing Act, id. § 1666; the Fair Credit Reporting Act, id. §§ 1681 et seq.; the Equal Credit Opportunity Act, id. § 1691; the Fair Debt Collection Practices Act, id. §§ 1692 et seq.; the Electronic Fund Transfer Act, id. §§ 1693 et seq.; the Hobby Protection Act, id. § 2101; the Magnuson-Moss Warranty--Federal Trade Commission Improvement Act, id. §§ 2301 et seq.; the Petroleum Marketing Practices Act, id. §§ 2821 et seq.; and the Energy Policy and Conservation Act, 42 U.S.C. § 6291.

Present applicability.

The Federal Trade Commission Act, like the other antitrust statutes, forbids certain practices affecting "commerce." And, as with the other statutes, "commerce" is defined broadly to include commerce within any "Territory," or between any "Territory" and any State, another Territory, or a foreign nation. 15 U.S.C. § 44. Only commerce that is totally intrastate is exempted from the reach of the Act, and that exemption exists only because of constitutional limitations on the powers of Congress. See U.S. Const., Art. 1, § 8, cl. 3; Fry v United States, 421 U.S. 542, 547-48 (1975); Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241, 253-257 (1964). Again, as with the other antitrust statutes, Congress intended the Federal Trade Commission Act to apply wherever the power of Congress extends. See the discussion, Present applicability, under chapter 1, above. Since the power of Congress extends to Guam, the Act is

applicable to Guam and the several States.* Accordingly, by operation of section 502(a)(2) of the Covenant, the Act is also applicable to the Northern Mariana Islands. As a consequence, the Federal Trade Commission may gather evidence from the Northern Mariana Islands, 15 U.S.C. § 49; and the Act may be enforced by the District Court for the Northern Mariana Islands, id. § 50. See also id. § 53(a); 48 U.S.C. § 1694a(a).

The Webb-Pomerene Act, 15 U.S.C. §§ 61-66, provides a limited exemption from the antitrust laws for certain export trade activities. "Exports" include exports from a "Territory" of the United States. Id. § 61. Since the antitrust laws apply to the Northern Mariana Islands, the Northern Mariana Islands is also part of the United States for purposes of the Webb-Pomerene exemption from those laws. 2A Sutherland, Statutes and Statutory Construction § 51.02 (C. Sands ed. 1973). Accordingly, associations and agreements intended to promote export trade from the Northern Mariana Islands are eligible to qualify for the Webb-Pomerene exemption from the antitrust laws.

The provisions of chapter 2 governing the proper labelling of wool, fur, and textiles are specifically applicable to the "possessions" or "insular possessions" of the United States. 15 U.S.C. §§ 68(h), 69(k), 70(l). See also id. § 68d(a), 69f(c)(2). Guam is an insular possession of the United States. Accordingly, by operation of section 502(a)(2) of the Covenant, the wool, fur, and textile labelling laws are applicable to the Northern Mariana Islands.

The Unfair Competition Act of 1916, 15 U.S.C. §§ 71-77, regulating imports into the United States is largely applicable to the Northern Mariana Islands but partly inapplicable. The Act is an antitrust statute and should be given the same construction as the other antitrust statutes. See Zenith Radio Corp. v. Matsushita Electric Industrial Co., 494 F. Supp. 1190, 1211-23 (E.D. Pa. 1980); 2A Sutherland, Statutes and Statutory Construction § 51.02 (C. Sands ed. 1973). As such, under the holdings in United States v. Standard Oil Co., 404 U.S. 558 (1972), and Puerto Rico v. Shell Co., 302 U.S.

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*See also Norman's on the Waterfront, Inc. v. Wheatley, 317 F. Supp. 247, 251 n.3 (D.V.I. 1970), affirmed, 444 F.2d 1011 (3d Cir. 1971). In that case, the federal district court held that the term "intrastate transactions," in now-repealed provisions of the Federal Trade Commission Act authorizing States and Territories to enact resale price maintenance laws, included transactions within the Virgin Islands. If the Virgin Islands are within the meaning of "State" for purposes of the Act, so too is Guam, which enjoys a juridical status very similar to that of the Virgin Islands.

253 (1937), the Act is applicable wherever the power of Congress extends. The power of Congress clearly extends to Guam.* Accordingly, by operation of section 502(a)(2) of the Covenant, the Unfair Competition Act is applicable to the Northern Mariana Islands.**

Section 73 of title 15, however, is not applicable to the Northern Mariana Islands. That section triples the duty on articles imported into the United States under an agreement (other than an exclusive sales agency agreement) that restricts the use or sale of other goods by the importer or any other person. The Northern Mariana Islands is not within the customs territory of the United States. Covenant § 603(a). Duties on goods imported into the Northern Mariana Islands are set solely by the government of the Northern Mariana Islands. Id. § 603(b). Accordingly, goods imported into the Northern Mariana Islands are not subject to triple duty for violation of section 73.

Many of the other laws not found in chapter 2 that are administered and enforced by the FTC are applicable to the Northern Mariana Islands, either directly or by operation of section 502(a)(2) of the Covenant. See 7 U.S.C. § 182(6) (Packers and Stockyards Act); 15 U.S.C. § 1127, 48 U.S.C. § 142la (Trade Mark Act); 15 U.S.C. § 1332(3) (Federal Cigarette Labeling and Advertising Act); id. § 1602(r) (Truth in Lending Act and Fair Credit Billing Act); id. § 1692a(8) (Fair Debt Collection Practices Act); id. § 2301(15) (Magnuson-Moss Waranty--Federal Trade Commission Improvement Act); 42 U.S.C. §§ 6202(4), 6291(17), 6302 (Energy Policy and Conservation

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*In its 1951 report to the United States Congress, the Commission on the Application of Federal Laws to Guam concluded that sections 71 to 77 of title 15, in the substantially similar language in effect on August 1, 1950, were then applicable to Guam. Report of the Commission on the Application of Federal Laws to Guam, House Document 212, 82d Cong., 1st Sess. 16 (1951). The staff of that commission concurred that the sections were "probably" applicable to Guam, but did not give a rationale for its conclusion. See House Committee on Interior and Insular Affairs, Resource Materials Used in the Preparation of the Report of the Commission on Application of Federal Laws to Guam 103-04 (Committee print 1952).

**An earlier study by the staff of this Commission concluded that the Northern Mariana Islands is not part of the United States for purposes of sections 72 and 75. Northern Mariana Islands Commission on Federal Laws, Borders: The Applicability of Federal Law to Imports to and Exports from the Northern Mariana Islands--A Survey 52-53 (staff study 1983). That study did not treat these sections as antitrust statutes given the broad application required by the Supreme Court decisions cited in the text, above.

Act). See also the discussions below of chapter 34, containing the Hart-Scott-Rodino Antitrust Improvements Act of 1976; and chapter 41, containing the Equal Credit Opportunity Act.

Discussion.

To protect consumers and competition in the Northern Mariana Islands and to avoid creating a loophole in the implementation and enforcement of the federal antitrust laws and laws against unfair competition, chapter 2 of title 15 should continue to apply in the Northern Mariana Islands.*

Chapter 2A. Securities and Trust Identures.

and

Chapter 2B. Securities Exchanges.

The statutes.

The Securities Act of 1933. The Securities Act of 1933, as amended (Securities Act), is found at sections 77a et seq. (chapter 2A) of title 15. Regulations issued pursuant to the Securities Act are found at sections 230.100 et seq. of title 17, C.F.R. (1984).

The Securities Act protects the investing public by imposing disclosure requirements on issuers of securities. The purpose of the full disclosure system, according to the Securities and Exchange Commission (SEC), is to

> assure that the securities markets operate in an environment in which full and accurate material information about publicly traded companies is available to investors, securities analysts and other interested persons. By fostering investor confidence and implementing the Congressional mandate of investor protection, the full disclosure system contributes to the maintenance of fair and orderly markets and facilitates the capital formation process.

Securities & Exchange Commission, 47th Annual Report 17 (1981).

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*No recommendation is here made to apply the only now-inapplicable provision of chapter 2 to the Northern Mariana Islands. That provision, section 72 of title 15, it will be recalled, triples the duty on the import of goods into the United States under certain anticompetitive conditions. Applying section 72 to imports into the Northern Mariana Islands would be inconsistent with the exclusive power to set duties conferred on the government of the Northern Mariana Islands by section 603(b) of the Covenant.

The term "security" is broadly defined by the statute to include stocks, bonds, investment contracts, and "the many [other] types of instruments that in our commercial world fall within the ordinary concept of a security . . . ." House Report 85, 73d Cong., 1st Sess. 11 (1933). See 15 U.S.C. § 77b(1).* Sections 77c and 77d of title 15 exempt from the registration provisions of the Act certain classes of securities (for example, securities issued by governments or banks) and certain transactions for which the benefits of regulation are too remote. See House Report 85, 73d Cong., 1st Sess. 5 (1933). If all securities issued by a firm are valued at less than $100,000, the firm is exempt from most registration requirements. 17 C.F.R. § 230.257 (1984).

The Act generally requires that, prior to issuance of a security in interstate commerce or through the mails, the issuer must file with the SEC a registration statement containing specified information about the security, the issuer, and the underwriters (that is, those involved in the distribution of the security). 15 U.S.C. §§ 77e-77g, 77aa. This information is made available to the public. Id. § 77f(d). The Act further requires that buyers be provided with a prospectus containing the essential information included in the registration statement. Id. § 77j. The SEC is responsible for ensuring that the required disclosure is made prior to distribution of the security and has authority under the Act to prevent a security from being distributed if the requirements are not met. Id. §§ 77e, 77h(d) and (e). Material misstatements or omissions subject the issuer to criminal or civil penalties. Id. §§ 77k, 77l, 77x. The Act also contains anti-fraud provisions. Id. § 77q.

Sections 77bb et seq. of title 15 establish a Corporation of Foreign Security Holders "for the purpose of protecting, conserving, and advancing the interests of the holders of foreign securities in default." Id. § 77bb.

The Trust Indenture Act of 1939, 53 Stat. 1149, amended the Securities Act to add protection for investors in certain types of bonds issued pursuant to trust indentures.** The Act requires the

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*The courts have upheld a broad definition of the term "security" as used in both the Securities Act and the Securities Exchange Act. See, for example, Tcherephin v. Knight, 389 U.S. 322 (1967); SEC v. Joiner Corp., 320 U.S. 344 (1943); SEC v. Glenn W. Turner Enterprises, Inc., 474 F.2d 476 (9th Cir. 1973), certiorari denied, 414 U.S. 821 (1973).

**A "trust indenture" is a "document which contains the terms and conditions which govern the conduct of the trustee and the rights of the beneficiaries." Black's Law Dictionary 1358 (5th ed. 1979).

trust indenture to include certain protective clauses and also requires trustees for the bondholder to be independent of the issuing company. 15 U.S.C. §§ 77aaa et seq.

The Securities Exchange Act of 1934. The Securities Exchange Act of 1934, as amended (Exchange Act), is found at sections 78a et seq. of title 15. Regulations promulgated thereunder are found at sections 240.0-1 et seq. of title 17, C.F.R. (1984).

Pursuant to the Exchange Act, the SEC regulates the securities markets, the self-policing organizations within the securities industry, and persons conducting a business in securities. 15 U.S.C. §§ 78a et seq. The Act "was intended principally to protect investors against manipulation of stock prices through regulation of transactions upon securities exchanges and in over-the-counter markets, and to impose regular reporting requirements on companies whose stock is listed on national securities exchanges." Ernst & Ernst v. Hochfelder, 425 U.S. 185, 195 (1976).

The Exchange Act created the SEC, provided for its organization, and gave it certain rule-making and enforcement powers. 15 U.S.C. §§ 78d, 78w. The Act addresses five main areas. First, the Act controls credit in the securities markets, by empowering the Board of Governors of the Federal Reserve System to prescribe rules relating to the extension of credit by brokers and dealers. 15 U.S.C. § 78g. These rules establish, among other things, initial minimum margin requirements.* See 12 C.F.R. part 220 (1984). The Act itself makes it unlawful for any member of a national securities exchange, or any broker or dealer, to borrow on any security registered on a national securities exchange, except (1) from or through a member bank of the Federal Reserve System, (2) from a nonmember bank for which an agreement filed with the Board of Governors of the Federal Reserve System relating to the use of credit is in effect, or (3) in accordance with rules and regulations of the Board of Governors of the Federal Reserve System permitting loans among members, brokers, and dealers. 15 U.S.C. § 78h; 12 C.F.R. § 220.5 (1984).

Second, the Act regulates exchanges and exchange trading. 15 U.S.C. §§ 78f, 78k. No exchange may be registered as a national securities exchange until the SEC has determined that the exchange has the capacity to enforce its own rules as well as the rules and regulations of the SEC. Id. § 78f(b)(1).

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*"Margin" is the cash or collateral provided by a purchaser to a broker or dealer when buying securities with the aid of credit obtained from the broker or dealer. While the Board regulates initial margin requirements, margin maintenance requirements are set by the various self-regulatory organizations, including the securities exchanges and national securities associations. See 12 C.F.R. § 220.7(b), (e) (1984).

Third, the Act prohibits the manipulation of securities prices. Id. § 78i. These safeguards are designed to ensure "a free and honest market" that will not be "defeated by manipulative practices." Senate Report 1455, 73d Cong., 2d Sess. 54 (1934). Specifically, the Act makes it unlawful to engage in a transaction or a series of transactions for the purpose of creating a false or misleading appearance of active trading in a security or for the purpose of inducing the purchase or sale of a security by others. 15 U.S.C. § 78i(a).

Fourth, the Act permits a security to be registered on a national securities exchange only after the issuer has filed an application with the SEC together with additional information appropriate to the public interest and for the protection of investors.* Id. § 78l. This information must be kept current by the filing of regular reports. Id. § 78m. In addition, the Act is intended to prevent abuses in the area of proxy solicitation and insider trading. Id. §§ 78n, 78p. This latter provision requires any beneficial owner of more than ten percent of a security, or any director or officer of the issuer of any security, to report to the SEC whenever any change occurs in his or her ownership of stock in the corporation.**

Last, the Act regulates trading in over-the-counter securities markets, and provides that no association of brokers and dealers may be registered as a national securities association until certain SEC requirements are met, including provision of satisfactory evidence of the association's capacity to enforce its own rules as well as the rules and regulations of the SEC.*** Id. § 78o-3.

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*"It is anticipated that the information filed by a corporation as a condition precedent to registration will be so complete as to present to the stockholder, or the prospective stockholder, a picture of the corporation's financial condition which will enable him intelligently to evaluate its securities." Senate Report 1455, 73d Cong., 2d Sess. 74 (1934).

**Profits realized by an insider from the purchase and sale of a stock within a period of less than six months are profits of the corporation and must be paid over by the insider to the corporation. 15 U.S.C. § 78p(b).

***A national securities association is a self-policing association of brokers and dealers engaged in over-the-counter securities transactions. 15 U.S.C. § 78o-3. Brokers and dealers must be members of a national securities association in order to engage in over-the-counter transactions. Id. § 78o(b)(8). See generally 69 Am. Jur. 2d, Securities Regulation--Federal § 401 (1973). The National Association of Securities Dealers is the only national securities association registered under the Act. Id. § 364.

Present applicability.

The Securities Act of 1933. The Securities Act generally applies to any non-exempted security sold through the channels of interstate commerce or the mails. 15 U.S.C. § 77e. "Interstate commerce" is defined to include commerce between any Territory and any State of the United States, the District of Columbia, any other Territory, or any foreign country. Id. § 77b(7). The term, "Territory," in turn, is defined to include the insular possessions of the United States. Id. § 77b(6). Because Guam is an insular possession of the United States, the Act applies to securities offered or sold through commerce or the mails between Guam and any State, other territory, the District of Columbia, or any foreign country.

Therefore, by operation of section 502(a)(2) of the Covenant, the Securities Act applies to securities offered or sold through commerce or the mails between the Northern Mariana Islands and any State or territory of the United States, the District of Columbia, or any foreign country.

The Securities Exchange Act of 1934. The Exchange Act defines "interstate commerce" to mean "trade, commerce, transportation, or communication among the several States or between any foreign country and any State, or between any State and any place or ship outside thereof." 15 U.S.C. § 78c(a)(17). The Act defines "State" to mean "any State of the United States, the District of Columbia, Puerto Rico, the Canal Zone, the Virgin Islands, or any other possession of the United States." Id. § 78c(a)(16). Because Guam is a possession of the United States, the Act applies to transactions in securities offered or sold between Guam and anywhere else. By operation of section 502(a)(2) of the Covenant, the Exchange Act applies to transactions in securities offered or sold between the Northern Mariana Islands and anywhere else.

Discussion.

Prior to World War I transactions in securities were carried on by a relatively small number of people.* The Federal Government's Liberty Loan Drives during and after the war, however, taught a large segment of the population that paper could represent property and that securities could yield a reasonable rate of return. Later, during the 1920s, high-pressure salesmen lured unsophisticated

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*Until the enactment of federal securities legislation, securities were regulated by the States. Because most businesses were involved in interstate commerce, State statutes afforded little protection. 1 L. Loss, Securities Regulation 105-06 (2d ed. 1961).

investors into securities trading with promises of high interest returns and easy wealth. Fraudulent securities were sold for dubious enterprises, including the development of "imaginary mines in Peru, mythical railroads in Canada, . . . extracting gold from seawater, [and] light from pomegranates." James, The Securities Act of 1933, 32 Mich. L. Rev. 624, 627 (1934). Speculation was rampant. It was estimated that during this period

> [s]ome 50 billions of new securities were floated in the United States. Fully half or $25,000,000,000 worth of securities floated during this period have been proved to be worthless. These cold figures spell tragedy in the lives of thousands of individuals who invested their life savings, accumulated after years of effort, in these worthless securities.

House Report 85, 73d Cong., 1st Sess. 2 (1933).

In 1932 the Senate Committee on Banking and Currency was directed to investigate practices "with respect to the buying and selling and the borrowing and lending of listed securities upon the various stock exchanges, the values of such securities, and the effect of such practices upon interstate and foreign commerce . . . ." Senate Resolution 84, 72d Cong., 1st Sess., 75 Cong. Rec. 5241 (1932). See also Senate Resolutions 56 and 97, 73d Cong., 1st Sess., 77 Cong. Rec. 1171, 5232 (1933). The investigation laid the foundation for enactment of the Securities Act of 1933 and the Securities Exchange Act of 1934. 1 L. Loss, Securities Regulation 121 (2d ed. 1961); Senate Report 792, 73d Cong., 2d Sess. 3 (1934). Thus, the Acts were enacted in an effort to eliminate abuses in the financial markets believed to have contributed to the stock market crash of 1929 and the depression which followed.

Among these abuses were excessive use of credit, manipulation of stock prices, trading by officers and directors on the basis of inside information, and failure of corporations to disclose information which would have allowed investors to make informed investment decisions. See Senate Report 1455, 73d Cong., 2d Sess. (1934); Loomis, The Securities Exchange Act of 1934, 28 Geo. Wash. L. Rev. 214, 217 (1959).

The arguments for continued application of the federal securities laws to the Northern Mariana Islands are at least as strong as arguments for enactment of the legislation in the first place. Investors in the Northern Mariana Islands should be protected from unscrupulous securities practices just as investors are protected in other areas subject to the jurisdiction of the United States.

Nonapplicability of the federal securities laws to the Northern Mariana Islands would mean that unregulated securities could be issued. There would be no disclosure requirements for the issuer. There would be no requirement for a prospectus to be provided the buyer. High-pressure sales practices could go unchecked. An unregulated exchange could establish itself in the Northern Mariana Islands dealing in unregulated securities. While a securities haven in the Northern Mariana Islands might attract some investment capital, it would also make the Northern Mariana Islands a magnet for unscrupulous promoters and could tarnish the reputation of legitimate firms operating in the Northern Mariana Islands. Establishing the Northern Mariana Islands as the only area under the jurisdiction of the United States not subject to the federal securities laws, furthermore, could conceivably create "loopholes," making more difficult the enforcement of those laws nationally.*

The federal securities laws should consequently continue to apply to the Northern Mariana Islands. The people of the Northern Mariana Islands are as deserving of the protections afforded by these laws as are others under United States jurisdiction.

No legislation is necessary for their continued application.

Chapter 2B-1. Securities Investor Protection.

The statutes.

Chapter 2B-1 establishes the nonprofit Securities Investor Protection Corporation (SIPC) to protect stock market investors when a stockbroker holding cash or securities for those investors fails and is unable to satisfy its obligations to those investors. The SIPC protects investors in much the same way the Federal Deposit Insurance Corporation protects bank depositors. The SIPC obtains the funds to provide protection from its member stockbrokers and dealers.

Present applicability.

All registered stockbrokers and dealers** in the United States and its territories and possessions must be members of the SIPC. 15 U.S.C. § 78ccc(a)(2)(A)(i). Further, chapter 2B-1 is declared to apply as does the Securities Exchange Act of 1934. Id. § 78bbb. That Act is applicable to the possessions of the United States. Id.

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*No such loopholes, however, have thus far been identified.

**Only registered brokers or dealers may engage in securities transactions if the mails or any means of interstate commerce are used. 15 U.S.C. § 78o(a)(1).

§ 78c(a)(16),(17). Guam is a possession of the United States. Accordingly, by operation of section 502(a)(2) of the Covenant, all registered stockbrokers and dealers in the Northern Mariana Islands must be members of the SIPC, and all investors who are customers of those brokers or dealers are protected by this chapter.

Chapter 2C. Public Utility Holding Companies.

The statutes.

Chapter 2C protects investors in gas and electric utility holding companies by requiring those companies to register with the Securities and Exchange Commission (SEC), by limiting transactions between such companies, and by requiring the companies to disclose a wide range of information to the SEC, State regulatory agencies, and the investing public. A holding company is any firm that owns or controls 10 percent or more of an electric or gas utility or of another public utility holding company. 15 U.S.C. § 79b(a)(7).

Present applicability.

"United States" is defined, for purposes of chapter 2C, to include only the several States and the District of Columbia. 15 U.S.C. § 79b(a)(24), (25). "Interstate commerce" is defined to include commerce among the States (including the District of Columbia) or between a State and any place outside the State. Id. § 79b(a)(28). Thus, the Northern Mariana Islands is not part of the United States for purposes of chapter 2C, but commerce between the Northern Mariana Islands and, say, Hawaii is interstate commerce for purposes of the chapter.

The operative provisions of chapter 2C generally forbid specified activities and transactions of public utility holding companies if those activities or transactions affect interstate commerce or use the mails. See id. §§ 79d, 79e, 79f.

The SEC is given broad authority to exempt public utility holding companies from the provisions of the chapter if the business of those companies is primarily outside the several States and the District of Columbia. Id. § 79c(a)(5), (b). The SEC has exercised that authority to exempt from the provisions of the chapter any company not organized under the laws of any State or the District of Columbia and not owning assets in any of those jurisdictions (or having a subsidiary owning such assets). 17 C.F.R. § 250.5 (1984). Accordingly, any public utility holding company in the Northern Mariana Islands is exempt from the provisions of this chapter.

Discussion.

Electric power in the Northern Mariana Islands is generated and distributed by the government of the Northern Mariana Islands. There

is no gas distribution utility in the Northern Mariana Islands. There consequently is no need to apply this chapter to the Northern Mariana Islands.

From time to time, proposals have been made to turn over power generation and distribution in the Northern Mariana Islands to a privately held public utility. See Governor: Private Sector Takeover is Good and Bad, Pacific Daily News (Guam), Focus supplement, September 14, 1984, at 2; Panels Seek to Trim Government, id., February 17, 1984, at 2; Privatization of Services Sought, Marianas Variety, August 10, 1984, at 5. Even if power generation and distribution in the Northern Mariana Islands were handled by the private sector, there would be little reason to apply chapter 2C to the Northern Mariana Islands. Any private utility in the Northern Mariana Islands would be likely to be small, serving only the geographically isolated Northern Mariana Islands, and thus unlikely to be able to engage in the abuses that prompted enactment of chapter 2C.

Chapter 2D. Investment Companies and Advisers.

Chapter 2D is discussed in the recommendation, Investment companies, in the Recommendations section of this report.

Chapter 2E. Omnibus Small Business Capital Formation.

The statutes.

Chapter 2E authorizes the Securities and Exchange Commission (SEC) to collect and disseminate information on the needs of "new, small, medium-sized, and independent business" with respect to raising equity capital and to look for ways to reduce the costs of raising capital for small businesses (defined as firms the total outstanding securities and indebtedness of which are valued at $25 million or less).

Present applicability.

The information required to be collected pursuant to chapter 2E is available to the general public. 15 U.S.C. §§ 80c(a), 80c-1(d), 80c-3(b). Accordingly, persons in the Northern Mariana Islands may benefit from the information collected pursuant to this chapter.

Chapter 4. China Trade.

The statutes.

This chapter, enacted in 1922, authorizes the creation of "China Trade Act corporations" for the purpose of engaging in business in

China, which is defined to include Tibet, Mongolia, Hong Kong, and Macao. 15 U.S.C. §§ 142(b), 144. Such corporations may be chartered only if it is found that the "corporation will aid in developing markets in China for goods produced in the United States." Id. § 145. "No corporation for the purpose of engaging in business within China shall be created under any law of the United States other than this chapter." Id. § 162.

Present applicability.

A corporation created under this chapter is, of course, intended to operate primarily in China. A majority of the directors of the corporation and its president and treasurer are required to reside in China. 15 U.S.C. § 149(b).

A majority of the incorporators, a majority of the directors, and the president and treasurer of a China Trade Act corporation are required to be citizens of the United States. Id. §§ 144(a), 149. Citizens of the Northern Mariana Islands will not become citizens of the United States until termination of the trusteeship under which the Northern Mariana Islands is currently administered. Covenant §§ 301, 1003(c). Accordingly, until that time citizens of the Northern Mariana Islands cannot be regarded as citizens of the United States for purposes of these requirements.*

Discussion.

By 1976, when favorable tax treatment for China Trade Act corporations was repealed, this chapter was regarded as a dead letter. At that time only three such corporations were active, trading only with Hong Kong and Formosa, and reportedly accounting for "a rather negligible amount of trade." House Report 94-658, at 261-62 (1975). And despite the apparent prohibition of this chapter against creation of corporations other than China Trade Act corporations to engage in business in China, there were by 1976 "innumerable U.S. companies currently trading in Hong Kong and Formosa" not organized as China Trade Act corporations. Id. at 262.

Because of the largely obsolete character of this chapter, amendment to allow citizens of the Northern Mariana Islands to form China Trade Act corporations would serve no purpose.

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*No recommendations were made with regard to these citizenship requirements in the Commission's January 1982 interim report to the United States Congress.

Chapter 5. Statistical and Commercial Information.

The statutes.

Chapter 5 requires the United States Department of Commerce to collect, organize, and publish statistics on manufacturing, commerce, transportation, and trade in the United States and, to some extent, in foreign countries.

Present applicability.

The current geographic applicability of chapter 5 is not specified with particularity. Two provisions state that information collected is to show "the condition of the manufactures, domestic trade, currency, and banks of the several States and Territories." 15 U.S.C. §§ 176, 183. Both provisions were originally enacted well before the United States acquired Puerto Rico, the Virgin Islands, or Guam, so whether "Territory" was intended to include such after-acquired jurisdictions is not clear.

Fortunately, whether chapter 5 is applicable to the Northern Mariana Islands is not of great moment. Sections 131, 182, and 193 of title 13, United States Code, authorize the Department of Commerce to collect virtually all the same information. The Northern Mariana Islands is specifically required to be included among the areas from which information is to be collected for purposes of those sections.

Chapter 6. Weights and Measures and Standard Time.

The statutes.

Chapter 6 establishes standard legal units and equivalencies for measures of length (for example, inches, miles, centimeters), capacity (for example, gallons, bushels, liters), surface area (for example, square feet, acres, hectares), and weight (for example, ounces, pounds, and grams). The chapter also establishes standard gauges (thicknesses) for iron and steel and standard units of electrical measure (for example, ohms, amperes, watts). Standard barrels are established for apples, other fruits and vegetables, dry commodities, and lime. A standard set of weights and measures is to be provided to each State land grant college by the Secretary of Commerce.

In addition, chapter 6 makes the metric system lawful in the United States and establishes the United States Metric Board, to promote use of the metric system in the United States.

The chapter also contains the Uniform Time Act, establishing uniform time zones spanning the United States and provides for the use of "daylight savings time" from the end of April to the end of October (so that the population will be encouraged to start its daily activities closer to sunrise and end them closer to sunset, and thereby reduce costs of artificial lighting).

Present applicability.

With the exception of the provisions on the measurement of time, chapter 6 provides little guidance on the geographic applicability of its provisions. The metric system is made lawful "throughout the United States of America." 15 U.S.C. § 204. Standard units of measurement are made legal for use "in the United States." Id. §§ 205, 206, 223. Substandard barrels may not be used or shipped from "any State [or] Territory" to any other State or Territory or a foreign country. Id. §§ 235, 238, 241. The general intention of Congress in adopting standardized units of weights and measures may be presumed to include making the use of those adopted units as widespread as possible. "United States" and "Territory," for purposes of these provisions, should be construed to include Guam* and, by operation of section 502(a)(2) of the Covenant, the Northern Mariana Islands.

"State" is defined, for purposes of the Uniform Time Act, to include any possession of the United States. Id. § 267. Guam is a possession of the United States. Accordingly, by operation of section 502(a)(2) of the Covenant, the Northern Mariana Islands is also a State for purposes of the Uniform Time Act.

The operative provisions of the Uniform Time Act are sections 260, 260a, and 262 of title 15. Each of these provisions, however, applies only "within the standard time zones prescribed by sections 261-264." The westernmost of the eight standard time zones, the Bering Zone, "includes that part of the United States that is between 162° W. longitude and 172°30' W. longitude and that part of the Aleutian Islands that is west of 172°30' W. longitude, but does not include any part of the State of Hawaii." 49 C.F.R. § 71.13 (1983). The Northern Mariana Islands is three times zones further west. Since the Northern Mariana Islands is not within any of those

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*The Commission on the Application of Federal Laws to Guam in 1951 reached a similar conclusion and noted the concurrence in that conclusion by the Bureau of Standards of the United States Department of Commerce. Report of the Commission on the Application of Federal Laws to Guam, House Document 212, 82d Cong., 1st Sess. 16 (1951); House Committee on Interior and Insular Affairs, Resource Materials Used in the Preparation of the Report of the Commission on Application of Federal Laws to Guam 104 (Committee print 1952).

standard time zones, the operative provisions of the law do not apply in the Northern Mariana Islands.

Further, the Northern Mariana Islands by its own legislation has defined its own "Marianas Standard Time" and, as authorized by section 260a of title 15, has decided not to observe daylight savings time. 1 Code of the Northern Mariana Islands §§ 501-502 (1983).

Discussion--the Uniform Time Act.

There is no purpose to be served by instituting daylight savings time at a location near the Equator, where the times of sunrise and sunset vary little throughout the year. There also seems to be little benefit and, for that matter, little burden for the Northern Mariana Islands in establishing in federal law a standard time zone to embrace the area.

Chapter 7. Bureau of Standards.

The statutes.

Chapter 7 establishes the National Bureau of Standards within the United States Department of Commerce. The Bureau, among other functions,

> provides the national system of physical, chemical, and materials measurement; coordinates the system with measurement systems of other nations and furnishes essential services leading to accurate and uniform physical and chemical measurement throughout the Nation's scientific community, industry, and commerce; conducts materials research leading to improved methods of measurement, standards, and data on the properties of materials needed by industry, commerce, educational institutions, and Government; provides advisory and research services to other Government agencies; develops, produces, and distributes standard reference materials; and provides calibration services.

U.S. Government Manual 139 (1982). Chapter 7 also authorizes the Bureau to operate a fire research center and a hydraulic research center.

Present applicability.

Chapter 7 does not specify with precision the geographic applicability of its provisions. The provisions establishing the National Bureau of Standards are part of the internal organization of the Federal Government and, as such, have no geographic applicability. The Bureau is authorized to "exercise its functions"

for, among others, "any State or municipal government within the United States . . . or any scientific society, educational institution, firm, corporation or individual within the United States or friendly countries engaged in manufacturing or other pursuits requiring the use of standards or standardized instruments." 15 U.S.C. § 273. The work of the Fire Research Center is to be "disseminated broadly." Id. § 278f(a). Bureau regulations make the Bureau's research and services generally available to the public at large. 15 C.F.R. part 200 (1985). Under these statutory and regulatory provisions, the Bureau should be regarded as authorized to make its research and services available to persons on Guam.* By operation of section 502(a) of the Covenant, Bureau research and services are also available to persons in the Northern Mariana Islands.

Chapter 7A. Standard Reference Data Program.

The statutes.

Chapter 7A authorizes the United States Department of Commerce to compile and disseminate standard reference data on the physical and chemical properties of materials.

Present applicability.

The purpose of this chapter is to make standard reference data readily available to scientists, engineers, and the general public. 15 U.S.C. § 290. Persons in the Northern Mariana Islands thus may obtain the information made public pursuant to this chapter.

Chapter 8. Falsely Stamped Gold or Silver or Goods Manufactured Therefrom.

The statutes.

Chapter 8 makes criminal the false marking of gold, silver, or gold or silver articles and the import, export, or movement in interstate commerce of falsely marked gold, silver, or gold or silver articles.

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*The Commission on the Application of Federal Laws to Guam reached the same conclusion in 1951, noting that "The Bureau of Standards believes it may carry on its functions in relation to and on Guam." Report of the Commission on the Application of Federal Laws to Guam, House Document 212, 82d Cong., 1st Sess. 17 (1951); House Committee on Interior and Insular Affairs, Resource Materials Used in the Preparation of the Report of the Commission on Application of Federal Laws to Guam 104-05 (Committee print 1952).

Present applicability.

Movement of falsely marked gold, silver, or gold or silver articles between the States and the Territories and possessions is specifically prohibited. The intent of the prohibition, as shown by the language of the statute, is to include the territories and possessions within the United States for purposes of the statute. Guam would thus be included and, by operation of section 502(a)(2) of the Covenant, so would the Northern Mariana Islands. Chapter 8 consequently prohibits the importation and exportation of falsely marked gold and silver to and from the Northern Mariana Islands and prohibits its movement between the Northern Mariana Islands and other parts of the United States.

Chapter 9. National Weather Service.

The statutes.

Chapter 9 establishes the National Weather Service within the National Oceanic and Atmospheric Administration (NOAA) of the United States Department of Commerce and charges it with forecasting the weather and recording climactic conditions.

Present applicability.

Chapter 9 does not specify with precision the geographic areas for which the National Weather Service is required to forecast weather conditions and record climactic data. Regulations issued by NOAA likewise do not specify those areas. See 15 C.F.R. parts 907, 945 (1985). In the U.S. Government Manual (1982), however, at page 141, NOAA is described as reporting "the weather of the United States and its possessions and [providing] weather forecasts to the general public. . . ." Guam is a possession so, by operation of section 502(a) of the Covenant, NOAA's construction of its authority would extend to reporting the weather of the Northern Mariana Islands and providing weather forecasts to the general public there.

The National Weather Service has for a number of years maintained stations and employed personnel in the Trust Territory of the Pacific Islands for the collection of meteorological data. In June 1983, it was announced that a NOAA weather radio station would be established in the Northern Mariana Islands in the near future to give the population of the Northern Mariana Islands timely warning of weather disturbances and storms. NOAA Weather Station Slated for Commonwealth, Marianas Variety, June 17, 1983, at 9.*

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*The station is scheduled to begin broadcasting in mid-1985. Telephone conversation, February 22, 1985, between Commission staff and John Brookbank, Office of the General Counsel, National Oceanic and Atmospheric Administration.

Discussion.

Weather forecasts are of importance to the residents of the Northern Mariana Islands, just as they are to people elsewhere in the United States. Timely warning of the tropical storms and typhoons that are not infrequent in the Northern Mariana Islands is essential to the protection of life and property.

In the past, tropical storm and typhoon warnings and other weather forecasts have been provided to the government of the Northern Mariana Islands and media serving the Northern Mariana Islands from United States Navy weather forecasting facilities on Guam. In addition, the government of the Northern Mariana Islands is now able to receive daily weather forecasts from the Federal Aviation Administration. Direct Weather Reports Due, Pacific Daily News (Guam), Focus supplement, October 12, 1984, at 1.

Chapter 9A. Weather Modification Activities or Attempts: Reporting Requirement.

The statutes.

Chapter 9A requires any person attempting to modify weather in the United States (for example, by seeding rain clouds) to report that activity to the Secretary of Commerce. The Secretary is required to keep a record of such attempts and make information about weather modification activities available to the public.

Present applicability.

"United States" is defined, for purposes of chapter 9A, to include "any territory or insular possession of the United States." 15 U.S.C. § 330(4). Guam is a territory or insular possession of the United States. Accordingly, by operation of section 502(a)(2) of the Covenant, chapter 9A is applicable to the Northern Mariana Islands and persons attempting to modify the weather of the Northern Mariana Islands must report their activities to the Secretary of Commerce.

Chapter 10A. Collection of State Cigarette Taxes.

The statutes.

Chapter 10A assists States in collecting cigarette taxes. Any person who brings cigarettes into a State having a cigarette tax to sell to anyone other than a State-licensed distributor must report the shipment to the State tobacco tax administrator.

Present applicability.

"State" is defined, for purposes of chapter 10A, to include only

the several States, Puerto Rico, and the District of Columbia. 15 U.S.C. § 375(6). Accordingly, persons bringing cigarettes into the Northern Mariana Islands for sale are not required by this chapter to report their shipments to Northern Mariana Islands tax authorities.

Discussion.

The Northern Mariana Islands, under section 603 of the Covenant, is a customs territory in and of itself and has the authority to examine all shipments of any products into the Northern Mariana Islands. The Northern Mariana Islands, unlike the States of the United States, consequently does not need the assistance provided by this chapter to collect locally-imposed cigarette taxes.

Chapter 10B. State Taxation of Income from Interstate Commerce.

The statutes.

Chapter 10B prohibits a State from collecting income tax from a person or firm whose only activity within the State is the solicitation of orders. Residents of the State and corporations organized under State law may, however, be taxed.

A State is also prohibited from imposing any tax on the generation or transmission of electricity that discriminates against out-of-State users of that electricity.

Present applicability.

"State" is not defined for purposes of chapter 10B. See also Senate Report 658, 86th Cong., 1st Sess. (1959) and House Conference Report 1103, 86th Cong., 1st Sess. (1959), both reprinted at 1959 U.S. Code Cong. & Ad. News 2548, 2560. In the absence of a definition expanding the meaning of "State" beyond its normal usage to include the territories or possessions, the term does not include those jurisdictions.* Accordingly, chapter 10B does not directly limit the taxing powers of the Northern Mariana Islands. Applicable constitutional provisions, however, may impose similar limitations. See the discussion immediately below.

Discussion.

The principal income tax in the Northern Mariana Islands is the federal income tax imposed as a local mirror-image tax. Covenant

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*But see Goldberg v. State Tax Commission, 618 S.W.2d 635, 641-42 (Mo. 1981), assuming without discussion that chapter 10B limits the taxing power of Puerto Rico.

§ 601; Northern Mariana Islands Public Law 4-24 (1984). The extent to which the income of a person or firm not residing in the Northern Mariana Islands may be taxed by the Northern Mariana Islands is determined by the same rules that determine the extent to which the income of a person or firm not residing in the United States is subject to the federal income tax. Covenant § 601; 48 U.S.C. § 142li(e). See generally 26 U.S.C. §§ 2(d), 11(d), 871, 877, 882; 26 C.F.R. §§ 1.864-3 to 1.864-7 (1984).

The Northern Mariana Islands may also impose its own local income tax, in addition to the federal income tax imposed as a local territorial income tax. Covenant § 602. The ability of the Northern Mariana Islands to impose a local tax on the income of a foreign business is limited only by applicable provisions of the Constitution of the United States and the Constitution of the Northern Mariana Islands.

The Commerce Clause, Article I, Section 8, Clause 3, of the Constitution of the United States, imposes some limits on the power of the States to levy taxes affecting interstate commerce. Chapter 10B is intended to establish a minimum threshhold of activity within a State before the income of a foreign (that is, out-of-State) business may be taxed by that State. See Heublein, Inc. v. South Carolina Tax Commission, 409 U.S. 275, 279-80 (1972).

Whether the Commerce Clause itself imposes limits on the power of the Northern Mariana Islands to tax the income of foreign business is unclear. The Commerce Clause is not applicable to the Northern Mariana Islands unless it applies "of its own force." Covenant § 501. The application of the Commerce Clause to territories and possessions of the United States has not been definitively determined. See Pan American World Airways v. Virgin Islands, 459 F.2d 387, 395 (3d Cir. 1972). The Due Process Clause of the United States Constitution is clearly applicable to the Northern Mariana Islands. Covenant § 501. See also Constitution of the Northern Mariana Islands, Art. I, § 5. That clause imposes approximately the same limitations on the imposition of taxes as does the Commerce Clause. Pan American World Airways v. Virgin Islands, above, 459 F.2d at 395. A court might well decide that income from a person or firm whose only activity within the Northern Mariana Islands is the solicitation of orders cannot be taxed by the Northern Mariana Islands consistently with due process requirements.

Chapter 12. Discrimination Against Farmers Cooperative Associations by Boards of Trade.

The statutes.

Boards of trade are exchanges where agricultural commodities are purchased and sold. Chapter 12 prohibits boards of trade from

discriminating in their membership policy against agricultural cooperatives.

Present applicability.

The geographic reach of chapter 12 is defined by whether the agricultural commodities bought or sold by a board of trade move in interstate commerce. 15 U.S.C. § 432. If the commodities move in interstate commerce, the board of trade may not discriminate against agricultural cooperatives. "Interstate commerce" is defined, for purposes of chapter 12, to include (among other types of commerce) commerce between "any State, Territory, or possession . . . and any place outside thereof." Id. § 431(c). See also id. § 431(d). Guam is a Territory or possession. Accordingly, by operation of section 502(a)(2) of the Covenant, a board of trade dealing in agricultural commodities moving into or out of the Northern Mariana Islands may not discriminate against agricultural cooperatives.

Chapter 13. Textile Foundation.

The statutes.

Chapter 13 establishes a corporation, the Textile Foundation, to promote scientific and economic research for the benefit of the textile industry. The principal offices of the Foundation are to be in Washington, D.C.

Present applicability.

Chapter 13 places no geographic limitations on the operations of the Textile Foundation. The Foundation is authorized to establish agencies or branch offices at such places as it deems advisable. The Foundation accordingly could, but is not required to, engage in research benefitting the textile industry in the Northern Mariana Islands and establish offices there.

Discussion.

The Washington, D.C., telephone directory gives no listing for the Textile Foundation. Librarians at the Textile Museum in Washington and the Institute for Textile Technology in Charlottesville, Virginia, believe the Foundation is no longer active.* Accordingly, whether the applicability of chapter 13 to the Northern Mariana Islands should be changed is academic.

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*Telephone conversations with Commission staff, November 16, 1984.

Chapter 13A. Fishing Industry.

The statutes.

Chapter 13A allows persons engaged in the fishing industry to act together in catching and selling fish and other marine and freshwater products without their collective action being considered unlawful restraint of trade under the antitrust laws. If, however, that collective action results in excessive prices, the Secretary of Commerce is given the power to prevent monopolization or restraint of trade by those persons.

Present applicability.

Persons catching fish or other aquatic products entering the commerce of the United States and its Territories and possessions (among other places) are entitled to the antitrust exemption granted by chapter 13A. 15 U.S.C. § 521. Guam is a Territory or possession. Accordingly, by operation of section 502(a)(2) of the Covenant, persons catching fish and other aquatic products and bringing them into commerce in the Northern Mariana Islands may engage in collective action to the extent permitted by this chapter.

Chapter 14A. Aid to Small Business.

The statutes.

Chapter 14A provides aid for small business and establishes the Small Business Administration:

> The fundamental purposes of the Small Business Administration (SBA) are to aid, counsel, assist, and protect the interests of small business; ensure that small business concerns receive a fair portion of Government purchases, contracts and subcontracts, as well as of the sales of Government property; make loans to small business concerns, State and local development companies, and the victims of floods or other catastrophes, or of certain types of economic injury; and license, regulate, and make loans to small business investment companies.

U.S. Government Manual 599 (1982).

A "small business" is one that is independently owned and operated and not dominant in its field of operation. 15 U.S.C. § 632. Limitations on the size of a small business eligible for assistance vary according to the industry in which the business operates. Id.; 13 C.F.R. part 121 (1984).

Loans are made to small business by the SBA only if commercial loans are not available on reasonable terms. 15 U.S.C. § 636.

Present applicability.

The SBA is authorized to establish offices throughout the United States. 15 U.S.C. § 633(a). "United States" is defined, for purposes of chapter 14A, to include "the several States, the Territories and possessions of the United States, the Commonwealth of Puerto Rico, the Trust Territory of the Pacific Islands, and the District of Columbia." Id. While chapter 14A does not specify precisely the jurisdictions in which it is to apply, the definition of "United States" to include a particular jurisdiction is strong evidence of congressional intent that the chapter apply in that jurisdiction. Rubenstein v. United States, 153 F.2d 127, 129 (D.C. Cir. 1946). Guam is a Territory or possession of the United States, so the assistance authorized by this chapter is available on Guam. Accordingly, by operation of section 502(a)(1) of the Covenant, small businesses in the Northern Mariana Islands are eligible to receive SBA assistance. See also 13 C.F.R. §§ 101.3-1(i)(7); 101.3-2 (1984).

Chapter 14A targets "Asian Pacific Americans" as a "socially and economically disadvantaged group" to receive special attention from the SBA. 15 U.S.C. § 631(e). "Asian Pacific Americans" are defined to include persons with "origins from . . . the Northern Mariana Islands." 13 C.F.R. § 124.1-1(c)(3)(ii) (1984). SBA regulations add a requirement, not found in the authorizing statute, that individuals eligible for this special attention be citizens of the United States. Compare id. § 124.1-1(c)(2)(i) with 15 U.S.C. § 637(a)(4) to (a)(6). Citizens of the Northern Mariana Islands will not become citizens of the United States until termination of the trusteeship. Covenant §§ 301, 1003(c). Until that still uncertain date, citizens of the Northern Mariana Islands are not eligible for special attention as members of a socially or economically disadvantaged group (although citizens of the United States who trace their origins to the Northern Mariana Islands are eligible).*

Discussion.

Most businesses in the Northern Mariana Islands are "small businesses" under the most restrictive definition of the term. The development of small business is widely perceived as the most promising way to encourage the expansion and diversification of the private sector in the Northern Mariana Islands and, thus, to promote the economic development of those islands. As a consequence, a great deal of discussion has taken place on how best to extend SBA assistance to the Northern Mariana Islands. The only obstacles to

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*No recommendation was made with regard to this citizenship requirement in the Commission's January 1982 interim report to the United States Congress.

the extension of assistance appear to be limits on the total funds available to the SBA. See generally Funding for CNMI Plans Identified, Marianas Variety, August 10, 1984, at 3; Business Center Sought, Pacific Daily News (Guam), Focus supplement, June 22, 1984, at 7; U.S. Officials Support SBA Assistance to the Commonwealth, Commonwealth Examiner, May 18, 1984, at 21; NMI Group Asks Montoya to Help Small Business, Pacific Daily News, March 16, 1984, at 7; Small Businesses Organize, id., Focus supplement, March 9, 1984, at 6; Northern Marianas Seek SBA Assistance, Marianas Variety, March 2, 1984, at 2; Official Offers Aid to Small Businesses, Pacific Daily News, February 28, 1984, at 4.

The United States citizenship requirement imposed by SBA regulations for treatment as a member of a socially or economically disadvantaged group should be changed. The exclusion of citizens of the Northern Mariana Islands, which almost certainly was unintentional, can be remedied by amendment of the regulation; no action by Congress is required.

Residents of Saipan have already benefitted from SBA disaster assistance. See, for example, Saipan Eligible for [Typhoon] Hazen Disaster Loans, Pacific Daily News, January 29, 1982, at 9.

Chapter 14B. Small Business Investment Program.

The statutes.

Chapter 14B authorizes the Small Business Administration (SBA) to license and support small business investment companies (SBICs). SBICs are created by private investors as a source of equity capital for small businesses. A licensed SBIC with its own private paid-in capital of $500,000 is eligible for long-term loans or loan guarantees from the SBA.

Chapter 14B also authorizes the SBA to guarantee payment of rent for commercial or industrial property by small business concerns; to guarantee the surety on a bond issued in favor of small business against any loss from a failure to perform by the small business; and to guarantee payments by small businesses on contracts for the planning, design, or installation of pollution control facilities.

In addition, chapter 14B authorizes the SBA to lend money to State and local development companies for plant acquisition, construction, conversion, or expansion. The SBA is also authorized to guarantee repayment of bonds issued by such development companies.

Present applicability.

Small business investment companies "organized and chartered under State law" and "State and local development companies" are

eligible for assistance under chapter 14B. "State" is defined, for purposes of the chapter, to include "the Territories and possessions of the United States." 15 U.S.C. §§ 662(4). Guam is a Territory or possession. Accordingly, by operation of section 502(a) of the Covenant, small business investment companies organized and chartered under the laws of the Northern Mariana Islands, small businesses in the Northern Mariana Islands, and any Northern Mariana Islands development company are eligible for the loans, loan guarantees, and other assistance available under chapter 14B.

In addition, the definition of "State" to include Territories and possessions for purposes of chapter 14B is strong evidence of congressional intent that all programs authorized by the chapter be available in the Territories and possessions. Rubenstein v. United States, 153 F.2d 127, 129 (D.C. Cir. 1946). Accordingly, again by operation of section 502(a)(2) of the Covenant, all programs authorized by the chapter are available in the Northern Mariana Islands.

Chapter 15. Economic Recovery.

The statutes.

Chapter 15 establishes the Commodity Credit Corporation within the United States Department of Agriculture. The Corporation's purposes are "stabilizing, supporting, and protecting farm income and prices," maintaining "balanced and adequate supplies of agricultural commodities," and "facilitating the orderly distribution" of those commodities. 15 U.S.C. § 714. The Corporation supports prices of agricultural commodities by purchasing those commodities with federal funds.

Chapter 15 also creates a fisheries research and development grant program administered by the United States Department of Commerce.

Present applicability.

Chapter 15 does not define with specificity the jurisdictions in which the Commodity Credit Corporation may operate. The incidental mention of "Territories and possessions" in several provisions in the chapter makes clear that the Corporation's powers and responsibilities extend to those jurisdictions. See 15 U.S.C. §§ 713a-5 (exemption from taxation); 714b(c) (court jurisdiction); 714i (cooperation with other governmental agencies). Guam is a Territory or possession. Accordingly, by operation of section 502(a) of the Covenant, the Corporation's powers and responsibilities extend to the Northern Mariana Islands.

The fisheries research and development grant program is specifically applicable to the Northern Mariana Islands and citizens

of the Northern Mariana Islands are specifically eligible to receive such grants. Id. § 713c-3(a).

Chapter 15A. Interstate Transportation of Petroleum Products.

The statutes.

Chapter 15A assists States in conserving deposits of crude oil found within their borders. State limitations on the extraction of oil are enforced by making criminal the transportation in interstate commerce of oil extracted in violation of those limitations.

Present applicability.

"State" is not defined by chapter 15A and, consequently, cannot be assumed to include the territories and possessions of the United States. Accordingly, the Northern Mariana Islands is not a "State" for purposes of chapter 15A and any limitations on the production of oil under the law of the Northern Mariana Islands would not be reinforced by the federal penalties imposed by this chapter.

Discussion.

No oil has been produced in the Northern Mariana Islands. Unless and until oil is produced in the Northern Mariana Islands, consideration of whether chapter 15A ought to be made applicable to the Northern Mariana Islands is unnecessary.

Chapter 15B. Natural Gas.

The statutes.

Under chapter 15B, the Natural Gas Act of 1938, the Federal Energy Regulatory Commission controls the price of natural gas moving in interstate commerce and approves all natural gas exports from and imports to the United States.

Present applicability.

"United States" is not defined for purposes of chapter 15B. Section 717a(4) of title 15 defines "State" to include "any organized Territory of the United States." Sections 717s and 717u give jurisdiction to enforce chapter 15B to "the United States courts of any Territory or other place subject to the jurisdiction of the United States." These provisions provide some evidence of a congressional intent that at least the "organized Territories" and, perhaps, all "places subject to the jurisdiction of the United States" be considered part of the United States for purposes of the prohibitions on the import and export of natural gas.

If all places subject to the jurisdiction of the United States

are within the United States for purposes of section 717b, imports to and exports from Guam are clearly within the section's prohibitions. By operation of section 502(a)(2) of the Covenant, imports to and exports from the Northern Mariana Islands would also be included.

If only "organized Territories" are within the United States for purposes of section 717b, the applicability of the section to the Northern Mariana Islands, by operation of section 502(a)(2) of the Covenant, depends upon whether Guam is an "organized Territory," as the term is used in this chapter. Guam did not yet have an organic act in 1938 when the chapter was enacted, and thus was not then "organized." See United States v. Standard Oil Co., 404 U.S. 558, 559 n.2 (1972).*

Discussion.

The tropical climate of the Northern Mariana Islands makes unlikely the importation of natural gas for heating purposes. There are at this time no large-scale industrial users of natural gas in the Northern Mariana Islands. On the export side, no sources of commercial quantities of natural gas are now known to exist in the Northern Mariana Islands. Consequently, resolution of the uncertain applicability of chapter 15B to the Northern Mariana Islands is not necessary at this time.

Chapter 15C. Alaska Natural Gas Transportation.

The statutes.

Chapter 15C authorizes the construction of a natural gas pipeline (or other transportation system) from Alaska to the forty-eight contiguous States.

Present applicability.

Any natural gas transportation system constructed pursuant to chapter 15C would not serve the Northern Mariana Islands in any way. Accordingly, the chapter is inapplicable to the Northern Mariana Islands.

Chapter 16A. Emergency Petroleum Allocation.

The statutes.

Chapter 16A, the Emergency Petroleum Allocation Act of 1973,

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*Further, "Territory" (as opposed to "territory") is sometimes, but not always, used to mean only a territory that has been "incorporated" into the United States. Guam is an unincorporated territory. 48 U.S.C. § 1421a.

authorizes the President to allocate gasoline and certain other petroleum products in the event of temporary shortages in the United States.*

Present applicability.

"United States" is defined, for purposes of chapter 16A, to include "the territories and possessions of the United States." 15 U.S.C. § 752(7). Guam is a territory or possession of the United States. Accordingly, by operation of section 502(a)(2) of the Covenant, the President's authority in the event of an oil shortage includes the authority to allocate oil to and within the Northern Mariana Islands. See 15 U.S.C. § 753(a).

Chapter 16B. Federal Energy Administration.

The statutes.

Chapter 16B established the Federal Energy Administration, to plan, direct, and control a variety of federal programs (authorized by other federal laws) "related to the production, conservation, use, control, distribution, rationing, and allocation of all forms of energy." 15 U.S.C. § 764(a). The Federal Energy Administration was subsequently merged into the United States Department of Energy, when that cabinet agency was created. 42 U.S.C. § 7151(a).

Present applicability.

No provisions in chapter 16B define the extent of the geographic area in which the Federal Energy Administration was to have operated (before its incorporation into the Department of Energy). The chapter established an agency within the executive branch of the Federal Government and assigned that agency the administration of certain federal laws. The agency's geographic jurisdiction was coextensive with the geographic applicability of those laws. Among those laws is the Emergency Petroleum Allocation Act, which is applicable to the Northern Mariana Islands. See the discussion of chapter 16A, above.

Chapter 16C. Energy Supply and Environmental Coordination.

The statutes.

Chapter 16C authorizes the United States Department of Energy,

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*Virtually all allocation controls thus far imposed pursuant to this chapter have since been revoked. Executive Order 12287, 46 Fed. Reg. 9909 (1981); Executive Order 12153, as amended, 44 Fed. Reg. 48949, 76477 (1979), 45 Fed. Reg. 3559 (1980).

as successor to the Federal Energy Administration,* to prevent power plants and other major fuel burning installations from burning natural gas or petroleum products if coal is a reasonable alternative fuel; to require that new installations be able to burn coal; and to take other steps to coordinate conservation of fossil fuels with protection of the environment.

Present applicability.

The current applicability of chapter 16C to the Northern Mariana Islands must be determined on a section-by-section basis.

The authority to issue orders or rules under section 792, relating to the conversion of power plants to coal, expired on December 31, 1978. 15 U.S.C. § 792(f). All such orders and rules issued before that date expired on January 1, 1985. Id. Neither the statute nor its legislative history indicate whether power plants in the Northern Mariana Islands are subject to section 792. No orders or rules applicable to power plants in the Northern Mariana Islands appear to have been issued pursuant to the section, so the question of the section's applicability to the Northern Mariana Islands is now academic.

Subsection (a) of section 793 reguires distribution of low sulfur fuel (which causes less air pollution) to areas with the worst air pollution problems when fuel is allocated pursuant to section 792 or pursuant to the Emergency Petroleum Allocation Act of 1973. The latter Act, discussed under chapter 16A, above, is applicable to the Northern Mariana Islands, so fuel allocations made pursuant to that Act may result in the allocation of high-sulfur fuel to the Northern Mariana Islands, which has few air pollution problems. Whether the Northern Mariana Islands might also receive high-sulfur fuel under an allocation made pursuant to section 792 is, as discussed above, now academic.

Subsection (b) authorizes a federal study of health effects from coal burning power plants. Because there are no coal burning power plants in the Northern Mariana Islands, whether this subsection is applicable to the Northern Mariana Islands is also academic.

Subsection (c) provides that actions taken under the Clean Air Act or under section 792 are not to be considered "major Federal actions significantly affecting the quality of the human environment" for purposes of the National Environmental Policy Act (NEPA). NEPA is applicable to the Northern Mariana Islands. Covenant § 502(a)(2); People of Saipan v. United States Department of Interior, 356 F. Supp. 645 (D. Hawaii (1973), affirmed as modified, 502 F.2d 90 (9th

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*42 U.S.C. § 7151(a).

Cir. 1974), certiorari denied, 420 U.S. 1003 (1975). So also is the Clean Air Act. 42 U.S.C. § 7602(d).* Subsection (c) should be construed to extend wherever the laws it modifies extend. 2A Sutherland, Statutes and Statutory Construction § 51.02 (C. Sands ed. 1973). Accordingly, actions taken under the Clean Air Act affecting the Northern Mariana Islands are not major federal actions significantly affecting the quality of the human environment triggering NEPA. Whether actions taken under section 792 in the Northern Mariana Islands are also exempt from NEPA is academic since, as discussed above, no such actions have been taken.

Subsection (d) of section 793 is relevant only to particular electric power transmission facilities in the State of New York and is thus inapplicable to the Northern Mariana Islands.

Sections 794 and 795 in subchapter 16C required certain information to be given to Congress before January 31, 1975, and are now obsolete, so whether those sections are applicable is academic.

For purposes of one provision in chapter 16C, authorizing the collection of a wide range of energy statistics, "United States" is defined to include "the territories and possessions of the United States." 15 U.S.C. § 796(e)(3). Guam is a territory or possession of the United States. Accordingly, by operation of section 502(a)(2) of the Covenant, energy statistics from the Northern Mariana Islands may be collected pursuant to that provision.

Chapter 19. Miscellaneous.

The statutes.

Chapter 19 allows any State, Territory, or possession to

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*In its January 1982 interim report to Congress, the Commission recommended enactment of legislation to exclude the Northern Mariana Islands from provisions of the Clean Air Act governing motor vehicle emission and fuel standards and to require the administrator of the Environmental Protection Agency to exempt the Northern Mariana Islands from any other requirement of the Clean Air Act on a finding by the governor of the Northern Mariana Islands that the benefits of compliance with that requirement in the Northern Mariana Islands are significantly outweighed by the costs of compliance. In December 1983, Public Law 98-213, 97 Stat. 1459, became law. Section 11 of that legislation amends the Clean Air Act by, among other things, allowing the administrator of the Environmental Protection Agency to exempt persons or air pollution sources in the Northern Mariana Islands from the application of particular requirements of the Clean Air Act. See 42 U.S.C. § 7625-1.

regulate prize fight films within their jurisdiction, regardless of whether those films are moving in interstate or foreign commerce.

Chapter 19 also regulates the collection of tolls from Federal Government traffic over certain bridges in the San Francisco, California, area.

Present applicability.

Since Guam is a territory or possession, it may regulate prize fight films pursuant to chapter 19. Accordingly, by operation of section 502(a)(2) of the Covenant, the Northern Mariana Islands may also regulate such films, regardless of whether the films are moving in interstate or foreign commerce.

The provisions of chapter 19 governing toll bridges in California are obviously of no relevance to the Northern Mariana Islands.

Chapter 20. Regulation of Insurance.

The statutes.

Chapter 20 declares a federal policy of allowing the States, rather than the Federal Government, to regulate the insurance industry. The federal antitrust laws are made generally inapplicable to that industry in any State that by its own laws regulates the industry. (The National Labor Relations Act, the Fair Labor Standards Act, and the Merchant Marine Act of 1920 continue to apply to the industry, regardless of State regulation. 15 U.S.C. § 1014.)

Present applicability.

"State" is defined, for purposes of chapter 20, to include among other jurisdictions, the several States and Guam.* 15 U.S.C.

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*Neither the Virgin Islands nor American Samoa is included within this definition of "State." Guam was included in the definition on the recommendation of the Commission on the Application of Federal Laws to Guam. See Act of August 1, 1956, c. 852, § 4, 70 Stat. 908; Report of the Commission on the Application of Federal Laws to Guam, House Document 212, 82d Cong., 1st Sess. 4, 5 (1951); House Committee on Interior and Insular Affairs, Resource Materials Used in the Preparation of the Report of the Commission on Application of Federal Laws to Guam 97-98 (Committee print 1952).

§ 1015. Accordingly, by operation of section 502(a)(2) of the Covenant, the Northern Mariana Islands is a "State" for purposes of chapter 20. The Northern Mariana Islands regulates its insurance industry. Northern Mariana Islands Public Law 3-107 (1984). Consequently, that industry in the Northern Mariana Islands is generally exempt from the antitrust laws and other federal regulation.

Chapter 21. National Policy on Employment and Productivity.

The statutes.

Chapter 21 establishes the Council of Economic Advisors to advise the President on economic matters and the Joint Economic Committee to coordinate economic policymaking by the United States Congress. Chapter 21 also establishes national economic goals such as promotion of free enterprise, full employment, and reduction of inflation and trade deficits.

Present applicability.

The Council of Economic Advisors and the Joint Economic Committee are part of the internal structure of the Federal Government. The activities of both entities and the economic goals established by chapter 21 relate to the United States as a whole. The effects of these activities and goals on the Northern Mariana Islands depend on the strength of the relationship between the economy of the Northern Mariana Islands and that of the nation. Nothing in chapter 21 either requires or forbids special consideration of the needs of the Northern Mariana Islands, or of any territory or possession, in formulating or implementing national economic policy.

Chapter 22. Trademarks.

The statutes.

A trademark is "any word, name, symbol, or device or any combination thereof adopted and used by a manufacturer or merchant to identify his goods and distinguish them from those manufactured or sold by others." 15 U.S.C. § 1127. (A trade name, by contrast, identifies the dealer or manufacturer rather than the goods and is not protectable under federal law unless the name is also a trademark.)

The original function of a trademark was to indicate ownership or origin. In modern trade usage

> the purchaser frequently does not know, or care about, the personal identity or name of the trademark owner and the user. Nevertheless, the purchaser of a trademarked article may think that all goods which bear the mark come from a common, even though anonymous, source. A mark may also serve to symbolize or guarantee the high quality of all goods which bear the particular mark and permit the purchaser to secure those goods which have given him satisfaction in the past and to reject those which have been felt to be unsatisfactory. In addition, in the dramatic expansion of advertising in this century, brand names have provided sellers with an effective short-hand device to use in creating a demand for their products.

S. Oppenheim & G. Weston, Unfair Trade Practices and Consumer Protection 32 (1974). See also Trade-Mark Cases, 100 U.S. 82 (1879).

Congressional authority to protect trademarks is within the powers granted by the Commerce Clause of the United States Constitution, Article I, Section 8, Clause 3. See Dawn Donut Co. v. Hart's Food Stores, Inc., 267 F.2d 358, 365 (2d Cir. 1958).

The trademark laws of the United States, commonly known as the Lanham Act, allow the owner of a trademark to register that trademark with the United States Patent and Trademark Office, and thereby to prevent other persons from using the same trademark. The trademark laws also provide owners of registered trademarks various rights and remedies under treaties and conventions between the United States and foreign nations.

Present applicability.

The Northern Mariana Islands is now defined as part of the United States for purposes of the trademark laws of the United States, so those laws apply in the Northern Mariana Islands as in other areas of the United States.*

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*Even were the Northern Mariana Islands not considered part of the United States, residents of the Northern Mariana Islands would be able to obtain protection for their products in the United States under those laws. Foreign nationals may obtain United States trademarks. 15 U.S.C. § 1051; Carl Zeiss Stiftung v. V.E.B. Carl Zeiss, Jena, 293 F.Supp. 892, 916 (S.D.N.Y. 1968). But the rights of foreign nationals and of United States citizens to be protected against infringement in the Northern Mariana Islands were the Northern Mariana Islands not considered part of the United States would be questionable. See Wells Fargo & Co. v. Wells Fargo Express Co., 556 F.2d 406, 426-30 (9th Cir. 1977).

"United States" is defined in the trademark laws to include all territory under the jurisdiction of the United States. 15 U.S.C. § 1127. Both Guam and Northern Mariana Islands are under the jurisdiction of the United States. See 48 U.S.C. § 1421a (Guam); Trusteeship Agreement, Art. 3; Covenant §§ 101, 1003(c).

Section 1126(i) of title 15 provides that citizens or residents of the United States shall receive all benefits afforded by the United States to foreign citizens pursuant to international trademark conventions. In its January 1982 interim report to the United States Congress the Commission recommended enactment of legislation to treat citizens of the Northern Mariana Islands as citizens of the United States for purposes of this provision. Section 4(f) of Presidential Proclamation 5207, 49 Fed. Reg. 24365 (1984), issued pursuant to section 19 of Public Law 98-213, 97 Stat. 1459 (1983), provides that citizens of the Northern Mariana Islands shall also receive all such benefits.

Discussion.

The purposes underlying the trademark laws are as important in the Northern Mariana Islands as in other areas of the United States. The manufacturer or merchant has the same interest in identifying his products and distinguishing them from the products of others. Society has the same interest in allowing trademarks a certain degree of protection.

Were the federal trademark laws not applicable in the Northern Mariana Islands, the Northern Mariana Islands could establish its own trademark laws. The cost of enacting and administering those laws would be high, however, and no benefits from local control are apparent. Given the relatively small population of the Northern Mariana Islands, few trademarks are likely to be sought. A separate system of trademark laws would raise questions as to the protection afforded United States and foreign rights in the Northern Mariana Islands, and that afforded Northern Mariana Islands rights in the United States and in foreign countries. The resulting uncertainties might also discourage potential investors from undertaking activities in the Northern Mariana Islands.

The federal trademark laws accordingly should continue to apply in the Northern Mariana Islands. No legislation is necessary for the continued application of these laws in the Northern Mariana Islands.

Chapter 23. Dissemination of Technical, Scientific and Engineering Information.

The statutes.

Chapter 23 establishes, within the United States Department of Commerce, a clearinghouse for the collection, organization, and

dissemination of technical, scientific, and engineering information. The purpose of the clearinghouse, known as the National Technical Information Service, is "to make the results of technological research and development more readily available to industry and business, and to the general public." 15 U.S.C. § 1151.

Present applicability.

The technological information collected pursuant to chapter 23 is available to the general public and is consequently available to persons in the Northern Mariana Islands. 15 U.S.C. §§ 1151, 1152(b).

Chapter 24. Transportation of Gambling Devices.

The statutes.

Chapter 24 contains the Gambling Devices Act of 1962, which makes unlawful the transportation of gambling devices, including slot machines, into any State or possession or the District of Columbia unless the devices are legal in the receiving jurisdiction. 15 U.S.C. § 1172. Manufacturers of gambling devices are required to register with the Attorney General of the United States and to identify each such device with a permanently affixed serial number, the name of the manufacturer, and the date the device was manufactured. Id. § 1173.

Present applicability.

"State" is defined, for purposes of chapter 24, to include Guam. 15 U.S.C. § 1171(b). The chapter thus applies to Guam and the several States. Accordingly, by operation of section 502(a)(2) of the Covenant, chapter 24 is applicable to the Northern Mariana Islands.

The prohibition on transportation of gambling devices does not apply to jurisdictions that have enacted legislation exempting themselves from that prohibition. The Northern Mariana Islands has enacted such legislation. See 6 Code of the Northern Mariana Islands § 3153 (1983).

Chapter 25. Flammable Fabrics.

The statutes.

Chapter 25 gives the Consumer Product Safety Commission (CPSC)* authority to set flammability standards for garments and interior

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*The Consumer Product Safety Commission is established by chapter 47 of title 15, discussed below.

furnishings made of fabrics (or related materials) and fabrics (or related materials) used or intended for use in garments or interior furnishings and forbids the importation into the United States or the movement in commerce of articles violating those standards. (The chapter is not applicable to articles exported from the United States.)

Present applicability.

"Commerce" is defined, for purposes of chapter 25, to include, in addition to commerce among the several States, commerce in any territory or insular possession of the United States. 15 U.S.C. § 1191(b), (c). Further, the CPSC, charged with enforcing the chapter, has defined "United States" to include "the Territories and Possessions of the United States." 16 C.F.R. § 1608.1(c) (1984).* Guam is a territory or insular possession. Accordingly, by operation of section 502(a)(2) of the Covenant, the Northern Mariana Islands is part of the United States for purposes of chapter 25 and fabrics, garments, or furnishings violating CPSC flammability standards may not be brought into the Northern Mariana Islands.

Chapter 26. Household Refrigerators.

The statutes.

Chapter 26 requires each household refrigerator offered for sale in interstate commerce to be equipped so that its door may be opened from inside. (The legislation was enacted to prevent children from locking themselves in abandoned or discarded refrigerators and suffocating.)

Present applicability.

"Interstate commerce" is defined, for purposes of chapter 26, to include commerce between or among the States, Territories, and possessions of the United States (as well as the District of Columbia and Puerto Rico). 15 U.S.C. § 1214. Guam is a Territory or possession. Accordingly, household refrigerators from any State, Territory, possession, the District of Columbia, or Puerto Rico may not be offered for sale in the Northern Mariana Islands unless equipped with the required door-opening device.

Chapter 26 is silent with respect to the sale of household refrigerators not equipped with the required safety device if those

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*The CPSC has also defined "export" to include exports from any territory or possession of the United States. 16 C.F.R. § 1019.2(b) (1984).

refrigerators are imported from a foreign nation and do not move in interstate commerce.*

Discussion.

Many refrigerators purchased in the Northern Mariana Islands are in fact imported from Japan and other east Asian nations. The compelling safety purpose of chapter 26 would best be served if household refrigerators imported into the Northern Mariana Islands from foreign nations were also clearly subject to the chapter. Amending the chapter to include imported household refrigerators would not change the applicability of the chapter to the Northern Mariana Islands but would alter the substance of the chapter as it applies to the entire United States. Recommending such a substantive change is beyond the mandate of this Commission.**

Chapter 27. Automobile Dealer Suits Against Manufacturers.

Chapter 27 is discussed in the recommendation, Automobile Dealers Day in Court Act, in the Recommendations section of this report.

Chapter 28. Disclosure of Automobile Information.

The statutes.

Chapter 28 requires each new automobile distributed in commerce to bear a label, affixed by the manufacturer, specifying certain information about the automobile, including its suggested retail price. Removal of the label before sale of the automobile to its ultimate purchaser is forbidden.

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*If "interstate commerce" were defined for purposes of chapter 26 to include commerce between "any State, Territory, or possession and any place outside thereof," as it is, for example, for purposes of chapter 12 of title 15, above, then imported refrigerators would also be required to be equipped with the door-opening device.

**The Consumer Product Safety Commission has the authority to ban the distribution in commerce of any product, whether imported or not, if the product is unreasonably dangerous. 15 U.S.C. §§ 2056, 2057, 2064. This authority could be exercised to ban the distribution of refrigerators not equipped with a door-opening device.

The Northern Mariana Islands could also enact local legislation to prevent the sale of any household refrigerators in the Northern Mariana Islands not equipped with the door-opening safety mechanism, regardless of where the refrigerator is manufactured.

Present applicability.

New automobiles shipped to "Guam, . . . the Trust Territories of the Pacific [sic], . . . or any other place under the jurisdiction of the United States shall be deemed to have been distributed in commerce." 15 U.S.C. § 1231(h). Accordingly, by operation of section 502(a)(2) of the Covenant, new automobiles for sale in the Northern Mariana Islands must bear the required labels.

Chapter 29. Manufacture, Transportation, or Distribution of Switchblade Knives.

The statutes.

Chapter 29 prohibits, with limited exceptions, the manufacture, distribution, and sale of switchblade knives in interstate commerce. 15 U.S.C. § 1242. The chapter also prohibits the possession of switchblade knives within any "Territory or possession of the United States." Id. § 1243.

Present applicability.

"Interstate commerce" is defined, for purposes of chapter 29, to include commerce "between any State, Territory, possession of the United States, or the District of Columbia, and any place outside thereof." 15 U.S.C. § 1241(a). Guam is a Territory or possession of the United States. Accordingly, by operation of section 502(a)(2) of the Covenant, the prohibition against the manufacture, distribution, and sale of switchblade knives in interstate commerce applies to commerce between the Northern Mariana Islands and any place outside thereof.

The ban on possession of switchblade knives within any Territory or possession of the United States does not, however, now apply to the Northern Mariana Islands. The Northern Mariana Islands is not now a Territory or possession of the United States. Although Guam is one or the other, the ban on possession is not applicable to the several States and is consequently not made applicable to the Northern Mariana Islands by operation of section 502 of the Covenant.*

Chapter 30. Hazardous Substances.

The statutes.

Chapter 30 requires the identification and labelling of hazardous substances and prohibits the introduction of misbranded or

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*Nor will the ban become applicable to the Northern Mariana Islands on termination of the trusteeship. Covenant § 105.

banned hazardous substances into interstate commerce. Hazardous substances include substances which are toxic, corrosive, irritants, strong sensitizers, flammable, or radioactive; substances which generate pressure through heat, pressure, or other means; and substances which may cause serious injury or illness in normal handling or use. See 15 U.S.C. § 1261. Substances, including toys and other articles, that present particular hazards to children are also included among "hazardous substances." Id.

Present applicability.

"Interstate commerce" is defined for purposes of chapter 30, to include "commerce between any State or territory and any place outside therof." 15 U.S.C. § 1261(b).* The term "territory" in turn is defined to include "any territory or possession of the United States." Id. § 1261(a). Guam is a territory or possession of the United States. By operation of section 502(a)(2) of the Covenant, "interstate commerce" includes commerce between the Northern Mariana Islands and any place outside thereof. Accordingly, the requirements and prohibitions of this chapter are applicable to hazardous substances moving in commerce between the Northern Mariana Islands and any place outside of the Northern Mariana Islands.

Chapter 31. Destruction of Property Moving in Commerce.

The statutes.

Chapter 31 makes criminal the willful destruction or injury of property moving by railroad, motor vehicle, or aircraft in interstate or foreign commerce in the possession of a common carrier or a contract carrier.

Present applicability.

"Interstate or foreign commerce" is not defined for purposes of chapter 31, but the use of that term indicates a congressional intention to reach all commerce that is not purely intrastate. Commerce between a territory or possession of the United States and a place outside thereof should thus be considered as encompassed by the term "interstate or foreign commerce." This conclusion is buttressed by a provision barring prosecution under this chapter if prosecution under the laws of any State or possession of the United States has already resulted in conviction or acquittal on the merits for the same act or acts. 15 U.S.C. § 1282. Guam is a possession of the United States. Accordingly, by operation of section 502(a)(2) of

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*In addition, "United States courts of the territories" are given jurisdiction to enforce the chapter. 15 U.S.C. § 1267(a).

the Covenant, property moving in or out of the Northern Mariana Islands in the possession of a common carrier or a contract carrier is protected by chapter 31.

Chapter 32. Telecasting of Professional Sports Contests.

The statutes.

Chapter 32 exempts from federal antitrust laws certain telecasting agreements by professional football, baseball, basketball, and hockey leagues.* Also exempted are mergers of football leagues if the resulting league increases rather than decreases the number of competing teams.

Present applicability.

The federal antitrust laws apply to the Northern Mariana Islands. See the discussion of chapters 1 and 2 of title 15, above. Chapter 32, an exception to the antitrust laws, is applicable wherever those laws apply. 2A Sutherland, Statutes and Statutory Construction § 51.02 (C. Sands ed. 1973). Accordingly, professional sports leagues in the Northern Mariana Islands are exempt from the antitrust laws to the limited extent allowed by chapter 32. (There are, however, currently no professional sports leagues in the Northern Mariana Islands.)

Chapter 34. Antitrust Civil Process.

The statutes.

Chapter 34 authorizes the Attorney General of the United States to investigate possible violations of the federal antitrust laws through the use of "civil investigative demands" without instituting a civil or criminal proceeding. Through the use of the civil investigative demand, the Attorney General may examine documents and witnesses to determine whether a civil or criminal complaint should be filed.

Present applicability.

Civil investigative demands may be served "at any place within the territorial jurisdiction of any court of the United States" and, to the extent consistent with due process, in foreign countries. 15

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*The telecasting exemption is written, however, to prevent professional football telecasts on Saturdays when college football games are played.

U.S.C. § 1312(d). The Attorney General may enforce the demand through proceedings in the district court for any judicial district in which the person on whom the demand was served resides, is found, or transacts business. Id. § 1314(a).

The broad reach of the civil investigative demand corresponds with the broad reach of the antitrust laws. See 2A Sutherland, Statutes and Statutory Construction § 51.02 (C. Sands ed. 1973). Those laws extend to the Northern Mariana Islands. See the discussion of chapters 1 and 2 of title 15, above. Accordingly, civil investigative demands may be served on persons in the Northern Mariana Islands and may be enforced by the District Court for the Northern Mariana Islands.*

Chapter 36. Cigarette Labeling and Advertising.

The statutes.

Chapter 36 requires all cigarettes sold or distributed in the United States to bear labels warning of the adverse health effects of smoking and forbids cigarette advertising on radio and television stations regulated by the Federal Communications Commission.

Present applicability.

"United States" is defined, for purposes of chapter 36, to include Guam. 15 U.S.C. § 1332(3). Accordingly, by operation of section 502(a)(2) of the Covenant, cigarettes sold or distributed in the Northern Mariana Islands must bear the required label.

Radio and television stations in the Northern Mariana Islands are subject to regulation by the Federal Communications Commission. 47 U.S.C. §§ 153(e), (g), (v); 301. Accordingly, those radio and television stations may not broadcast cigarette commercials.

Chapter 37. State Technical Services.

The statutes.

Chapter 37 authorizes federal financial assistance to support State and multi-state technical service programs designed to increase the effective use of scientific and engineering information by business and industry. Technical services are to be provided pursuant to a five-year plan, prepared by an institution or agency

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*The District Court for the Northern Mariana Islands has all the jurisdiction of a district court of the United States. 48 U.S.C. § 1694a(a).

designated by the governor of the State, and approved by the Secretary of Commerce. The federal assistance must be matched by State or other nonfederal funds.

Present applicability.

"State" is defined, for purposes of chapter 37, to include Guam. 15 U.S.C. § 1352(f). Accordingly, by operation of section 502(a) of the Covenant, the Northern Mariana Islands is eligible to receive federal assistance to support a technical service program.*

Chapter 38. Traffic and Motor Vehicle Safety.

The statute.

Chapter 38, the National Traffic and Motor Vehicle Safety Act of 1966, in an effort to reduce deaths and injuries from traffic accidents, authorizes the United States Secretary of Transportation to establish motor vehicle safety standards. New vehicles not meeting those standards may not be manufactured, sold, or delivered in interstate commerce and neither new nor used vehicles not meeting those standards may be imported into the United States.

Chapter 38 also requires motor vehicle tires to be graded according to a uniform quality grading system and to be permanently labelled with certain safety information. Each new motor vehicle must be equipped with tires which can carry the maximum permissible load for that vehicle. The sale or delivery of regrooved tires in interstate commerce is prohibited.

In addition, chapter 38 authorizes the Secretary of Transportation to establish facilities for research and testing in traffic safety.

Present applicability.

"State" is defined, for purposes of the motor vehicle safety standards of chapter 38, to include the several States and Guam, among other jurisdictions. 15 U.S.C. § 1391(8). Accordingly, by operation of section 502(a)(2) of the Covenant, the Northern Mariana Islands is also a "State" for purposes of the motor vehicle safety standards, and motor vehicles not meeting those standards may not be

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*The matching funds requirement of chapter 37 is subject to section 1469a(d) of title 48, United States Code, which provides in pertinent part that "in the case of . . . the Northern Mariana Islands any department or agency shall waive any requirement for local matching funds under $200,000 (including in-kind contributions) required by law to be provided by . . . the Northern Mariana Islands."

manufactured in the Northern Mariana Islands for sale elsewhere in the United States or brought into the Northern Mariana Islands from other parts of the United States or any foreign country for sale or delivery.

Discussion.

The applicability of chapter 38 to the Northern Mariana Islands has been the subject of some controversy. Most automobiles sold in the Northern Mariana Islands are manufactured in Japan. At least some Japanese manufacturers are said to produce automobiles which meet United States safety standards and Clean Air Act emission standards and others that meet neither set of standards. Those Japanese manufacturers are said to be unwilling to produce automobiles which meet United States safety standards but which are not equipped with emission control devices necessary to meet Clean Air Act standards. The small sales volume in the Northern Mariana Islands alone is apparently insufficient to justify production of automobiles which meet one set of standards but not the other.

Under the Clean Air Act, automobiles imported into the Northern Mariana Islands must meet emission control standards established by the United States Environmental Protection Agency. The Act also requires gasoline retailers in the Northern Mariana Islands to sell unleaded gasoline. Air quality in the Northern Mariana Islands is substantially better than that in most parts of the United States. Compliance with automobile emission control standards confers few benefits in the Northern Mariana Islands while costing consumers and service station operators in the Northern Mariana Islands substantial sums. For these reasons, this Commission in its 1982 interim report to the United States Congress recommended that motor vehicles in the Northern Mariana Islands be exempt from the emission control requirements of the Clean Air Act. In 1983 Congress authorized the administrator of the Environmental Protection Agency to exempt motor vehicles in the Northern Mariana Islands from these requirements. 42 U.S.C. § 7625-1(a).

Because Japanese imports into the Northern Mariana Islands are required to continue to meet federal safety standards, however, and because they will not, it is said, produce vehicles which meet safety standards but not emission control requirements, consumers in the Northern Mariana Islands must continue to pay for unwanted, costly, and unnecessary emission control equipment.*

Pursuant to authority granted by chapter 38, the Secretary of

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*The additional costs per vehicle of complying with federal safety and emission control requirements range from $300 to $4000, depending on make and model, according to information gathered from automobile dealers in the Northern Mariana Islands in 1982.

Transportation has established fifty motor vehicle safety standards. Among the items covered by the standards are location of controls, seat belt assemblies, rearview mirrors, occupant crash protection, acceleration control systems, roof-crash resistance, hydraulic brake systems, and child restraint systems. Some standards apply to only motorcycles or only school buses. See generally 49 C.F.R. part 571 (1984). None of the standards appears to be obviously unnecessary for vehicles operated in the Northern Mariana Islands.

In 1983 eight hundred twenty-eight traffic accidents were reported in the Northern Mariana Islands. [1983] Traffic Accidents Reported High, Marianas Variety, February 10, 1984, at 1. Three persons were killed in traffic accidents during that year. Id. That fatality rate, for the Northern Mariana Islands population of approximately 17,000 is roughly .18 traffic deaths per 1000 persons. By comparison, in 1982 there were 46,000 traffic deaths in the United States, with its population of approximately 227,000,000. World Alamanac 1984, at 197, 909 (1983). The rate in the United States is thus approximately .0002 traffic deaths per 1000 persons. The traffic death rate in the Northern Mariana Islands was about 900 times as great as in the United States.* In the absence of other data, nothing suggests that the need for automobile safety standards is less in the Northern Mariana Islands than elsewhere in the United States.

At least since October 1981 all new motor vehicles sold in the Northern Mariana Islands have met the safety standards issued pursuant to chapter 38. While some savings to automobile purchasers would result if those standards were not applicable in the Northern Mariana Islands, those savings could well be offset by the increased costs to individuals and to society from more frequent and more serious traffic accidents. Personal injuries, deaths, damage to property, and larger insurance premiums are all part of those costs to individuals and families. Society, largely through the government of the Northern Mariana Islands, must devote a greater proportion of its resources to emergency, hospital, and rehabilitation services.

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*Traffic fatalities are commonly assessed on the basis of vehicle miles travelled. World Almanac 1984, at 909 (1983). The short distances and limited number of miles of roads in the Northern Mariana Islands may well mean that the Northern Mariana Islands has an even more disproportionate traffic fatality rate measured by fatalities per vehicle miles travelled than is indicated by fatalities per 1000 population.

In 1984 five persons wre killed in traffic accidents in the Northern Mariana Islands. Focus on Holiday Traffic Successful, Pacific Daily News (Guam), Focus supplement, December 28, 1984, at 1. The three fatalities in 1983 thus do not seem atypically high.

Based on the foregoing considerations, no recommendation is here made to make chapter 38 inapplicable to the Northern Mariana Islands.

Chapter 39. Fair Packaging and Labeling Program.

The statutes.

Chapter 39 requires every consumer commodity distributed in commerce to bear a label identifying the commodity and its manufacturer or distributor and specifying the quantity of the commodity in any package. Consumer commodities include foods (other than meat and poultry), drugs, cosmetics, and most other products intended for household use. The United States Secretary of Health and Human Services or, depending on the type of product involved, the Federal Trade Commission is authorized to issue additional regulations to prevent the deception of consumers or to facilitate value comparisons. See 16 C.F.R. part 500 (1984); 21 C.F.R. parts 1, 101, 501, 701 (1984).

Present applicability.

"Commerce" is defined, for purposes of chapter 39, to include commerce between any State or any territory or possession of the United States and any place outside thereof (as well as other types of commerce). 15 U.S.C. § 1459(e). Guam is a territory or possession of the United States. Accordingly, by operation of section 502(a)(2) of the Covenant, consumer commodities brought into the Northern Mariana Islands (and consumer commodities exported from the Northern Mariana Islands) must bear the required labels and otherwise comply with the requirements of chapter 39 and regulations issued pursuant to the chapter.

The Secretary of the Treasury is given authority to enforce the prohibitions of chapter 39 as those prohibitions apply to imports into the United States. Imports into the United States are generally controlled by the United States Customs Service, part of the United States Department of the Treasury. The Northern Mariana Islands, however, is outside the customs territory of the United States. Covenant § 603(a). The United States Customs Service as a consequence does not control imports into the Northern Mariana Islands.*

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*The Commission has adopted a recommendation for federal legislation that would confirm the authority of the government of the Northern Mariana Islands to enforce federal laws when the federal agency with principal enforcement responsibility is unable or unwilling--for whatever reason--to perform that function. See the recommendation, Enforcement of federal laws in the Northern Mariana Islands, in the Recommendations section of this report.

Discussion.

Neither chapter 39 nor regulations issued thereunder explicitly require that consumer products be labelled in the English language. Many popular consumer commodities sold in the Northern Mariana Islands are imported from Japan, Taiwan, and other nations and are not labelled in English. While the basic information as to identity of product and manufacturer and quantity is usually discernible from the label, in some instances it is not.

Consumers in the Northern Mariana Islands are entitled to the same protection against unfair and deceptive labelling as are consumers elsewhere in the United States. At the same time, those consumers should not be denied access to a wide variety of commodities from foreign nations, commodities with which they are familiar and which they like, because those products are not labelled as required by this chapter. Ideally, all foreign manufacturers exporting to the Northern Mariana Islands would label their products as required, so that the choice of products available in the Northern Mariana Islands would not be narrowed. In practice, some manufacturers may prefer to give up selling in the relatively small Northern Mariana Islands market if required to go to the expense of designing and printing new labels.

Because no claim has yet been made that the requirements of chapter 39 cause undue hardship in the Northern Mariana Islands, no recommendation is here made to alter the applicability of the chapter to the Northern Mariana Islands.

Chapter 39A. Special Packaging of Household Substances for Protection of Children.

The statutes.

Chapter 39A, the Poison Prevention Packaging Act of 1970, requires household substances that present particular dangers to children to be packaged so that children under five, but not adults, will have difficulty in opening the package. Manufacturers are authorized also to sell the same substances in packages that are easy to open, for the use of elderly or handicapped persons, if the package is conspicuously labelled "This package for households without young children." The Consumer Product Safety Commission is authorized to establish special packaging standards for any household substance.

Present applicability.

The provisions of chapter 39A do not specify the jurisdictions in which the chapter is applicable. The Consumer Product Safety Commission, which administers the chapter, regards it as applicable

to the several States and Guam.* Administrative interpretations are accorded deference in construing statutes. See Sawczyk v. United States Coast Guard, 499 F. Supp. 1034 (W.D.N.Y. 1980); 2A Sutherland, Statutes and Statutory Construction § 49.06 (C. Sands ed. 1973). Accordingly, by operation of section 502(a)(2) of the Covenant, chapter 39A applies in the Northern Mariana Islands.

Chapter 40. Department of Commerce.

Chapter 40 is discussed in the recommendation, Fishery trade officers; Department of Commerce, in the Recommendations section of this report.

Chapter 41. Consumer Credit Protection.

Chapter 41 contains six subchapters, dealing respectively with consumer credit cost disclosure, restrictions on garnishment, credit reporting agencies, equal credit opportunity, debt collection practices, and electronic fund transfers. Three of those subchapters are treated in the recommendations, Restrictions on garnishment, Fair Credit Reporting Act, and Electronic Fund Transfer Act, in the Recommendations section of this report. The other three subchapters are examined below.

SUBCHAPTER I. CONSUMER CREDIT COST DISCLOSURE.

The statutes.

Subchapter I of chapter 41 contains, among other provisions, the Truth in Lending Act of 1968 and its subsequent amendments. That Act requires lenders to disclose fairly and fully all terms in consumer credit transactions, such as installment sales and personal loans. Transactions in excess of $25,000 (except for home sales) and commercial and agricultural loans, among others, are exempted from the Act's provisions. The Act does not regulate the amount of interest a lender may charge, but requires only that the interest rate and other charges, fees, and terms be completely disclosed. The

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*Section 1476 of title 15 allows a State to petition the Consumer Product Safety Commission to apply its own, more protective packaging standard instead of the Commission's standard. The Commission has defined "State" for purposes of this section to include, among other jurisdictions, the several States, Guam and the Trust Territory of the Pacific Islands. 16 C.F.R. § 1704.2(d) (1984). Only in jurisdictions in which chapter 39A is applicable would it be necessary to petition to apply a different standard. Consequently, the Commission regards the chapter as applicable in all the jurisdictions it includes within the definition of "State."

Act is intended in large part to protect consumers from unscrupulous creditors and unfair billing and credit card practices and to allow consumers to make informed comparisons among different sources of credit. The Act also protects credit card holders against large losses resulting from unauthorized use of a credit card and establishes procedures for correction of billing errors.

Present applicability.

"State" is defined, for purposes of subchapter I, to include the several States and, among other jurisdictions, "any territory or possession of the United States." 15 U.S.C. § 1602(r). Guam is a territory or possession of the United States. Accordingly, by operation of section 502(a)(2) of the Covenant, the Northern Mariana Islands is a "State" for purposes of the subchapter.

Subchapter I does not specify its geographic reach through its definition of "State." Indeed "State" and "United States" seldom appear in the subchapter and even less in the operative provisions of the subchapter. A procedure is provided, however, whereby it may be determined whether the requirements of a State law (including--because the Northern Mariana Islands is a "State"--a law of the Northern Mariana Islands) are inconsistent with the subchapter. 15 U.S.C. § 1610(a). If the subchapter were not applicable to the Northern Mariana Islands, there would be no need to determine if its laws were inconsistent with the subchapter. Further, while the subchapter does not specify precisely the jurisdictions in which it is to apply, a definition of "State" to include a particular jurisdiction for purposes of the subchapter is strong evidence of congressional intent that the subchapter be applicable in that jurisdiction. Rubenstein v. United States, 153 F.2d 127, 129 (D.C. Cir. 1946). Accordingly, consumer credit transactions in the Northern Mariana Islands are subject to the truth in lending and other requirements of subchapter I.

SUBCHAPTER II. RESTRICTIONS ON GARNISHMENT.

Subchapter II is discussed in the recommendation, Restrictions on Garnishment, in the Recommendations section of this report.

SUBCHAPTER III. CREDIT REPORTING AGENCIES.

Subchapter III is discussed in the recommendation, Fair Credit Reporting Act, in the Recommendations section of this report.

SUBCHAPTER IV. EQUAL CREDIT OPPORTUNITY.

The statutes.

Subchapter IV makes unlawful discrimination against credit applicants on the basis of race, color, religion, national origin, sex, marital status, or age.

Present applicability.

Subchapter IV contains no provisions defining its geographic applicability. The Board of Governors of the Federal Reserve System, however, is given broad authority to issue regulations implementing the subchapter. 15 U.S.C. § 1691b(a). The Board has defined "State" to include "any territory or possession of the United States." 12 C.F.R. § 202.2(bb) (1984). Guam is a territory or possession of the United States. Accordingly, by operation of section 502(a) of the Covenant, the Northern Mariana Islands is a "State" for purposes of subchapter IV. The operative provisions of subchapter IV refer not to States, however, but to creditors and credit applicants. See 15 U.S.C. § 1691. Even so, a definition of "State" for purposes of a particular statute to include a specified jurisdiction is strong evidence that the statute is to apply in that jurisdiction. See Rubenstein v. United States, 153 F.2d 127, 129 (D.C. Cir. 1946). Consequently, the prohibitions against discrimination contained in subchapter IV apply to creditors and protect credit applicants in the Northern Mariana Islands.

SUBCHAPTER V. DEBT COLLECTION PRACTICES.

The statutes.

Subchapter V prohibits debt collection businesses from using abusive, deceptive, and unfair practices to collect money owed. For example, a debt collector is prohibited from coming to the debtor's home at three in the morning to try to collect the debt, 15 U.S.C. § 1692c(a)(1); from using violence or the threat of violence to collect the debt, id. 1692d(1); and from harassing the debtor by frequent telephone calls, id. § 1692d(5).

Present applicability.

"Debt collectors" subject to subchapter V are those who use "any instrumentality of interstate commerce or the mails" in collecting debts. 15 U.S.C. § 1692a(6). "State" is defined, for purposes of this subchapter, to include among other jurisdictions "any State, territory, or possession of the United States." Id. § 1692a(8). Guam is a territory or possession of the United States. Accordingly, by operation of section 502(a) of the Covenant, the Northern Mariana Islands is a "State" for purposes of the subchapter and "interstate commerce" includes commerce between the Northern Mariana Islands and other parts of the United States. Consequently, debt collectors in the Northern Mariana Islands who use any instrumentality of interstate commerce or the mails are subject to the prohibitions of subchapter V.

SUBCHAPTER VI. ELECTRONIC FUND TRANSFERS.

Subchapter VI is discussed in the recommendation, Electronic Fund Transfer Act, in the Recommendations section of this report.

Chapter 42. Interstate Land Sales.

The statutes.

Chapter 42 is intended to prohibit fraudulent land development schemes. A developer is required to provide a prospective purchaser with a printed report giving a fair and accurate description of the property. Subdivisions containing less than twenty-five lots and certain other real estate are exempt from the requirements of the chapter.

Present applicability.

Chapter 42 generally applies to developers who "make use of any means or instruments of transportation or communication in interstate commerce, or of the mails." 15 U.S.C. § 1703(a). "Interstate commerce" is defined as "trade or commerce among the several States or between any foreign country and any State." Id. § 1701(8). "State" is defined to include, among other jurisdictions, "the several States . . . and the territories and possessions of the United States." Id. § 1701(9). Guam is a territory or possession of the United States. Accordingly, by operation of section 502(a)(2) of the Covenant, chapter 42 applies to developers who "make use of any means or instruments of transportation or communication" in commerce between the Northern Mariana Islands and any place outside of the Northern Mariana Islands, or of the mails.

The location of the land offered for lease or sale does not affect the applicability of the chapter; it may be located in the United States or in a foreign country. 15 U.S.C. § 1701(3).

Chapter 43. Newspaper Preservation.

The statutes.

Chapter 43 allows competing newspapers, with the prior approval of the Attorney General of the United States, to enter into joint operating arrangements without violating the antitrust laws. Such arrangements may encompass printing, circulation, delivery, solicitation of advertising, and other functions but not consolidation of editorial or reportorial staffs. Permission for joint operations is predicated on the likelihood that only one of the

newspapers would be able to stay in business without joint operations.

Present applicability.

As noted in the discussions of chapters 1 and 2, above, the antitrust laws are applicable to the Northern Mariana Islands. Exemptions from the antitrust laws, such as that contained in this chapter, must be construed to have identical geographic applicability. 2A Sutherland, Statutes and Statutory Construction § 51.02 (C. Sands ed. 1973).

Chapter 43 is more specific. "Persons" eligible for exemption from the antitrust laws conferred by this chapter include, among others, "any individual, and any partnership, corporation, association, or other legal entity existing under or authorized by the law of the United States, any State or possession of the United States, . . . or any foreign country." 15 U.S.C. § 1802(6). "Any individual" is not limited in any way, and so includes citizens and residents of the Northern Mariana Islands. Further, Guam is a possession of the United States. Accordingly, by operation of section 502(a)(2) of the Covenant, newspaper firms existing under or authorized by the law of the Northern Mariana Islands are eligible for the antitrust exemption conferred by chapter 43.

Chapter 44. Protection of Horses.

The statutes.

Chapter 44 outlaws the practice of "soring" horses, injuring or sensitizing their legs to induce artificially a particular gait for show purposes.

Present applicability.

Chapter 44 is phrased in expansive and general terms, but does not specifically define its geographic applicability. "State," however, is defined for purposes of the chapter to include, among other jurisdictions, "the several States, . . . Guam, . . . and the Trust Territory of the Pacific Islands." 15 U.S.C. § 1821(4). The definition of "State" to include a particular jurisdiction for purposes of a statute is strong evidence of congressional intent that the statute apply in that jurisdiction. Rubenstein v. United States, 153 F.2d 127, 129 (D.C. Cir. 1946). Accordingly, chapter 44 is applicable in Guam and the several States and, by operation of section 502(a)(2) of the Covenant, in the Northern Mariana Islands.

Chapter 45. Emergency Loan Guarantees to Business Enterprises.

The statutes.

Chapter 45 establishes the Emergency Loan Guarantee Board to make loans to businesses when commercial credit is not reasonably available and when failure of the business would have a substantial adverse effect on the economy.

Authority to make new loans pursuant to this chapter expired in 1973.

Present applicability.

Because authority to make new loans pursuant to this chapter expired before adoption of the Covenant, the chapter is de facto inapplicable to the Northern Mariana Islands.

Chapter 45A. Chrysler Corporation Loan Guarantee.

The statutes.

Chapter 45A authorized loan guarantees by the Federal Government of up to $1,500,000,000 to rescue the Chrysler Corporation, which was on the verge of bankruptcy in 1980.

Present applicability.

The provisions of chapter 45A apply only to the Chrysler Corporation and its employees, and affect the Northern Mariana Islands only incidentally, to the extent that firm does business there.

Chapter 46. Motor Vehicle Information and Cost Savings.

Chapter 46 contains five subchapters, dealing respectively with bumper standards for motor vehicles, an automobile consumer information study, demonstration projects for inspecting motor vehicles for safety and emission control defects, tampering with motor vehicle odometers, and improvements in automotive fuel economy. The five subchapters are treated in order below.

SUBCHAPTER I. BUMPER STANDARDS.

The statutes.

Subchapter I authorizes the United States Secretary of Transportation to issue bumper standards applicable to all motor vehicles manufactured in or imported into the United States. Vehicles not meeting the applicable standard may not be imported into

the United States. Bumper standards are intended to reduce front and rear end damage and consequent repair costs resulting from low-speed collisions or towing.

Present applicability.

"State" is defined for purposes of subchapter I to include, among other jurisdictions, the several States and Guam. 15 U.S.C. § 1901(16). "United States," although not specifically defined, must be considered to include each such "State." Accordingly, by operation of section 502(a)(2) of the Covenant, automobiles manufactured in or imported into the Northern Mariana Islands must meet federal bumper standards.

Discussion.

Subchapter I should continue to apply to the Northern Mariana Islands for the same reasons the National Traffic and Motor Vehicle Safety Act should continue to apply to the Northern Mariana Islands. See the discussion of chapter 38, above.

SUBCHAPTER II. AUTOMOBILE CONSUMER INFORMATION STUDY.

The statutes.

Subchapter II requires the Secretary of Transportation to compile and disseminate information on the damage susceptibility, crashworthiness, and ease of repair of different makes and models of passenger motor vehicles. Automobile dealers are required to distribute to prospective purchasers information developed by the Secretary comparing differences in insurance costs for different makes and models based on crashworthiness and damage susceptibility.

Present applicability.

The geographic applicability of subchapter II is not specifically defined. "State," however, is defined for purposes of the subchapter to include, among other jurisdictions, the several States and Guam. 15 U.S.C. § 1901(16). A definition of "State" to include a particular jurisdiction for purposes of a statute is strong evidence of congressional intent that the statute be applicable in that jurisdiction. Rubenstein v. United States, 153 F.2d 127, 129 (D.C. Cir. 1946). Accordingly, by operation of section 502(a)(2) of the Covenant, the information compiled by the Secretary of Transportation pursuant to this chapter must be available to the general public in the Northern Mariana Islands and automobile dealers in the Northern Mariana Islands must furnish to prospective purchasers the information on comparative insurance costs provided by the Secretary.

SUBCHAPTER III. DIAGNOSTIC INSPECTION DEMONSTRATION PROJECTS.

The statutes.

Subchapter III requires the Secretary of Transportation to provide funds and technical assistance to States for from five to ten demonstration projects for inspection of motor vehicles for safety and emission control defects.

Present applicability.

"State" is defined for purposes of subchapter III to include, among other jurisdictions, the several States and Guam. 15 U.S.C. § 1901(16). Accordingly, by operation of section 502(a)(2) of the Covenant, the Northern Mariana Islands is eligible for demonstration projects assisted under subchapter III.

Discussion.

The legislation authorizing State inspection demonstration projects authorized financial assistance to States for demonstration projects only through September 30, 1977. 15 U.S.C. § 1963(b), (c). Accordingly, whether the Northern Mariana Islands should be treated as a "State" for purposes of subchapter III is now academic.

SUCHAPTER IV. ODOMETER REQUIREMENTS.

The statutes.

An odometer is an instrument in a motor vehicle recording how many miles the vehicle has travelled. Purchasers of motor vehicles, particularly used vehicles, rely heavily on odometer readings to determine the safety, reliability, and value of a vehicle. Subchapter IV prohibits persons from tampering with or disconnecting odometers. Individuals and States are authorized to enforce the requirements of the subchapter.

Present applicability.

"State" is defined for purposes of subchapter IV to include, among other jurisdictions, the several States and Guam. 15 U.S.C. § 1901(16). Accordingly, by operation of section 502(a)(2) of the Covenant, the Northern Mariana Islands is authorized to enforce the requirements of the subchapter. By necessary implication, individuals in the Northern Mariana Islands may also enforce those requirements.

SUBCHAPTER V. IMPROVING AUTOMOTIVE EFFICIENCY.

The statutes.

Subchapter V requires automobiles manufactured in or imported into the customs territory of the United States to meet federal fuel economy standards and to bear labels specifying their fuel economy.

Present applicability.

Subchapter V applies only within the customs territory of the United States. 15 U.S.C. § 2001(9), (10). The Northern Mariana Islands is not within the customs territory of the United States. Covenant § 603(a). Accordingly, automobiles manufactured in or imported into the Northern Mariana Islands need not meet federal fuel economy standards or bear the labels required by subchapter V.

Chapter 47. Consumer Product Safety.

The statutes.

Chapter 47, the Consumer Product Safety Act, establishes the Consumer Product Safety Commission. The Commission, among other functions, collects information on hazardous consumer products, bans such products or requires corrective action where appropriate, conducts research on consumer product hazards, and establishes mandatory safety standards and encourages the development of voluntary standards for consumer products.

Present applicability.

Consumer products subject to chapter 47 are those which are "distributed in commerce." 15 U.S.C. §§ 2057(1); 2063(a)(1); 2064(b), (c), (d), (g)(1); 2065(a); 2068; 2071. "Commerce" is defined to include commerce "between a place in a State and any place outside therof." Id. § 2052(a)(12). "State" is defined to include, among other jurisdictions, the several States and Guam. Id. § 2052(a)(10). Accordingly, consumer products brought into the Northern Mariana Islands from any place outside of the Northern Mariana Islands are subject to regulation by the Consumer Product Safety Commission. (Also subject to regulation are consumer products sent from the Northern Mariana Islands to other parts of the United States.)

Section 2066 of title 15 requires consumer products violating federal safety standards to be refused admission into the customs territory of the United States. The Northern Mariana Islands is not within the customs territory of the United States. Covenant § 603(a). Accordingly, section 2066 does not apply to unsafe goods imported into the Northern Mariana Islands (although it does apply to

such goods imported into the United States from the Northern Mariana Islands). The inapplicability of section 2066 to imports into the Northern Mariana Islands does not, however, affect the applicability of other provisions in chapter 47 making unlawful the distribution in commerce in the Northern Mariana Islands of unsafe consumer products brought into the Northern Mariana Islands from any other place.

Chapter 48. Hobby Protection.

The statutes.

Chapter 48 prohibits the manufacture in, or importation into, the United States of improperly marked imitation political and numismatic items. The chapter is intended to protect collectors of coins and political memorabilia (such as political campaign buttons).

Present applicability.

"United States" is defined for purposes of chapter 48 to include neither Guam nor the Northern Mariana Islands. 15 U.S.C. § 2106(7). Accordingly, chapter 47 does not prohibit the manufacture in, or importation into, the Northern Mariana Islands of improperly marked imitation political and numismatic items.

Chapter 49. Fire Prevention and Control.

The statutes.

Chapter 49 authorizes federal assistance to States for fire prevention and control. The chapter also establishes the United States Fire Administration, now part of the Federal Emergency Management Agency (FEMA),* to undertake research and development and public education and to collect and disseminate information on fire hazards and fire prevention; and the National Academy for Fire Prevention and Control, also within FEMA, to provide professional training to firefighters.

Present applicability.

"State" is defined for purposes of chapter 49 to include, among other jurisdictions, the several States, Guam, and the Trust Territory of the Pacific Islands. Some provisions of the chapter make specific reference to "States." See 15 U.S.C. §§ 2206(e), (f); 2208(b)(2); 2209(a); 2211; 2220(a)(2), (6). Even though other provisions in the chapter are not specifically directed to "States," the definition of "State" to include a particular jurisdiction is

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*See Executive Order 12127, § 1-103, 3 C.F.R., Comp. 1979, at 376 (1980).

strong evidence of congressional intent that the statute be applicable to that jurisdiction. Rubenstein v. United States, 153 F.2d 127, 129 (D.C. Cir. 1946). By operation of section 502(a) of the Covenant, the Northern Mariana Islands is a "State" for purposes of chapter 49. Accordingly, the chapter is applicable to the Northern Mariana Islands.

Chapter 50. Consumer Product Warranties.

The statutes.

Chapter 50 contains the Magnuson-Moss Warranty Act, which establishes minimum standards that must be met by warranties* on consumer products. Written warranties must "fully and conspicuously disclose in simple and readily understood language the terms and conditions" of the warranty. 15 U.S.C. § 2302(a). Warranties must be made available to prospective purchasers prior to sale. Warranties must meet various other statutory requirements intended to protect consumers, as well as rules established by the Federal Trade Commission to implement those requirements.

Present applicability.

"Consumer products" subject to the Magnuson-Moss Warranty Act are those "distributed in commerce." 15 U.S.C. § 2301(1). "Commerce" is defined to include commerce "between a place in a State and any place outside thereof." Id. § 2301(14). "State" in turn is defined to include, among other jurisdictions, the several States and Guam. Id. § 2301(15). Accordingly, by operation of section 502(a)(2) of the Covenant, warranties on consumer products moving in commerce into or out of the Northern Mariana Islands must meet the requirements of chapter 50.

Chapter 51. National Productivity and Quality of Working Life.

The statutes.

Chapter 51 established the National Center for Productivity and Quality of Working Life, and charged it with formulating a national policy for increased productivity in the private and public sectors. Funding for the Center expired in 1978, and its functions were assumed by the National Productivity Council. 15 U.S.C. § 2471;

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*Warranties, in general, are guarantees by the manufacturer or seller of a product that the product is free of defects or will perform in a specified manner over a specified period of time. A warranty may also promise specific corrective action if the product does not perform as promised. See 15 U.S.C. § 2301(5).

Executive Order 12089, 3 C.F.R., Comp. 1978, at 246 (1979), as amended by Executive Order 12107, § 2-101(b), 3 C.F.R., Comp. 1978, at 264, 266, 268 (1979). The National Productivity Council was itself subsequently disbanded. Executive Order 12379, § 16, 3 C.F.R., Comp. 1982, at 204, 205 (1983). A National Productivity Advisory Committee later performed many of the same functions. Executive Order 12332, 3 C.F.R., Comp. 1981, at 198 (1982), as amended by Executive Order 12399, § 1, 3 C.F.R., Comp. 1982, at 236, 237 (1983). Authority for the Advisory Committee expired on September 30, 1984. Id.

Present applicability.

Because the entity created to carry out the purposes of chapter 51 no longer exists, whether the chapter applies to the Northern Mariana Islands is largely academic. The congressional findings and declaration of policy for the chapter do not specifically mention productivity in the territories and possessions of the United States as an area of concern, but neither is productivity in those jurisdictions excluded from the scope of the chapter. See 15 U.S.C. §§ 2401, 2402(1), 2403.*

Discussion.

Because the operative provisions of chapter 51 are largely obsolete, no purpose would be served by enacting legislation to clarify whether productivity in the Northern Mariana Islands is among the concerns addressed by the chapter.

Chapter 52. Electric and Hybrid Vehicle Research, Development, and Demonstration.

The statutes.

Chapter 52 encourages the development of motor vehicles powered, at least in part, by electrical storage batteries or fuel cells. The United States Department of Energy is given authority to conduct research, development, and demonstration projects and to guarantee loans that will further the use of electricity-powered motor vehicles.

Funding to carry out the purposes of this chapter was not authorized beyond 1983.

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*"State" was defined specifically to include the Northern Mariana Islands in legislation establishing a White House Conference on Productivity. Public Law 97-367, § 103(4), 96 Stat. 1761 (1982). That conference addressed many of the same concerns addressed by this chapter.

Present applicability.

The geographic applicability of chapter 52 is not defined by any provision in the chapter. In regulations implementing the chapter, the Department of Energy includes, among firms eligible for certain small business planning grants, concerns located in, among other jurisdictions, the several States and the territories and possessions of the United States. 10 C.F.R. § 476.2 (1984). Administrative definitions are accorded deference in construing statutes. See Sawczyk v. United States Coast Guard, 499 F. Supp. 1034 (W.D.N.Y. 1980); 2A Sutherland, Statutes and Statutory Construction § 49.06 (C. Sands ed. 1973). Guam is a territory or possession of the United States. Accordingly, by operation of section 502(a)(2) of the Covenant, small businesses in the Northern Mariana Islands are eligible for those planning grants. Further, if the chapter is applicable to the Northern Mariana Islands for one purpose, it is applicable for all purposes (in the absence of specific provisions to the contrary). Consequently, chapter 50 is applicable in its entirety to the Northern Mariana Islands.

Recipients of certain federally guaranteed loans for the development of electric powered motor vehicles must be citizens of the United States. 15 U.S.C. § 2509(i). Until termination of the trusteeship, citizens of the Northern Mariana Islands will not be citizens of the United States. Covenant §§ 301, 1003(c). No recommendation was made with regard to this citizenship requirement in the Commission's January 1982 interim report to the United States Congress.

Chapter 53. Toxic Substances Control.

The statutes.

Chapter 53 contains the Toxic Substances Control Act, a comprehensive regime for the regulation and control of chemical substances intended to reduce the risks of serious injury to health and the environment. The Act accomplishes its purposes by requiring testing of chemical substances and placing restrictions on the use of those substances where necessary.

Present applicability.

"Chemical substances" subject to chapter 53 are generally those which are distributed in commerce. See, for example, 15 U.S.C. §§ 2603(a); 2604(e), (f); 2605; 2606; 2614(2); 2616(a)(1)(D). "Commerce" includes commerce "between a place in a State and any place outside of such State." Id. § 2602(3). "State" in turn is defined specifically to include the Northern Mariana Islands. Id. § 2602(13). See also id. § 2602(14). Accordingly, chemical substances moving into or out of commerce in the Northern Mariana Islands are subject to the requirements of chapter 53.

Not only the distribution in commerce, but also the manufacture and processing of chemical substances, are reached by chapter 53. See again, for example, 15 U.S.C. §§ 2603(a); 2603(b)(3)(A); 2604(a), (e), (f); 2605; 2606; 2614(2); 2616(b). The geographic areas in which manufacturing and processing are subject to chapter 53, even if the chemical substance is not distributed in interstate commerce, are not precisely defined. The inclusion of the Northern Mariana Islands in the definitions of "State" and "United States," however, is strong evidence that Congress intended all of chapter 53 to apply in the Northern Mariana Islands. Rubenstein v. United States, 153 F.2d 127, 129 (D.C. Cir. 1946). Accordingly, the manufacture and processing of chemical substances in the Northern Mariana Islands is subject to the requirements of chapter 53.

Chapter 53 also bars admission of certain toxic substances into the customs territory of the United States. 15 U.S.C. § 2612. See also id. § 2602(7). The Northern Mariana Islands is not within the customs territory of the United States. Covenant § 603(a). Consequently, importation of these toxic substances into the Northern Mariana Islands is not prohibited. Nonetheless, as discussed above, the manufacture, processing, or distribution of such chemicals within the Northern Mariana Islands is subject to chapter 53. The only consequence of the exclusion of the Northern Mariana Islands from the customs territory of the United States, for purposes of this chapter, is that no federal law requires those particular toxic substances to be refused admission into the Northern Mariana Islands, even though those substances cannot legally be processed or distributed in commerce in the Northern Mariana Islands. (The Northern Mariana Islands could enact its own legislation refusing such substances admission into the Northern Mariana Islands.)

Exports of chemical substances from the United States are also controlled under chapter 53. 15 U.S.C. § 2611. Since the Northern Mariana Islands is defined to be within the United States for purposes of chapter 53, id. § 2602(13), (14), exports from the Northern Mariana Islands are subject to those controls.

Chapter 54. Automotive Propulsion Research and Development.

The statute.

Chapter 54 establishes a program, under the auspices of the United States Department of Energy, to develop advanced automotive propulsion systems. The advanced systems are intended to improve the environmental impact and fuel economy of the internal combustion engine now used in most automobiles. The Department is authorized to make contracts with or grants to a wide variety of entities for

research and development leading to improvements in automotive propulsion systems.

Present applicability.

The geographic applicability of chapter 54 is not specifically defined by any provision in the chapter. "State," however, is defined and, since none of the chapter's operative provisions refer to "States," that definition may be taken as strong evidence of the jurisdictions to which Congress intended the chapter to apply. See Rubenstein v. United States, 153 F.2d 127, 129 (D.C. Cir. 1946).

"State" is defined for purposes of chapter 53 to include, among other jurisdictions, the several States and Guam. 15 U.S.C. § 2702(8). Chapter 53 was enacted after January 9, 1978, the effective date of section 502 of the Covenant, so the Northern Mariana Islands is not made a "State" for purposes of the chapter by operation of the Covenant.

Discussion.

As a practical matter, the geographic applicability of chapter 53 is only important in determining the jurisdictions in which entities entering into contractual or grant arrangements with the Department of Energy may be located. Even there, the contracting and grantmaking authority of the Department is so broad that it can easily be interpreted to include not only persons and institutions in the Northern Mariana Islands, but also entities in foreign nations. See 15 U.S.C. § 2703(b); 10 C.F.R. § 473.2 (1984).

In any event, no funds for the research and development authorized by this chapter have been available since 1978. 15 U.S.C. § 2710.

Chapter 55. Petroleum Marketing Practices.

Chapter 55 is discussed in the recommendations, Petroleum Marketing Practices Act, in the Recommendations section of this report.

Chapter 56. National Climate Program.

The statutes.

Chapter 56 establishes a national climate program within the United States Department of Commerce to "assist the Nation and the world to understand and respond to natural and man-induced climate processes and their implications." 15 U.S.C. § 2902. "Climate" is the physical description of atmosphere and ocean at a location characterized over time scales of two weeks and longer. Summer

droughts, sea level rises, and ice ages are all climate phenomena. Predictions of weather events, the passage of a weather front, for example, are theoretically impossible beyond approximately two weeks. Climate forecasts begin in time at that far limit of weather predictability. See 15 U.S.C. § 2904(d)(8).

Federal grants to States for climate studies are authorized by the chapter.

Present applicability.

The geographic applicability of chapter 56 is not defined in its provisions. The principal purpose of the national climate program, however, is to accumulate knowledge about the climate of the Nation and the world and its effects. Such knowledge benefits people everywhere and has no geographic limitations.

"State" is not defined in chapter 56, for purposes of determining eligibility to receive federal grants under the chapter. Accordingly, "State" means only the fifty States of the Union and the Northern Mariana Islands is not eligible to receive such grants.

Chapter 57. Interstate Horseracing.

The statutes.

Chapter 57 regulates wagers made in one State on horseraces taking place in another State. The purpose of the chapter is protect horse race tracks from loss of attendance and wagering revenues. Senate Report 95-554, at 3 (1977). Out-of-state betting offices may only accept wagers with the permission of regulatory authorities in the State in which the betting office is located and in the State in which the horse race is run. The out-of-state betting office must also obtain the approval of horse racing tracks near that office.

Present applicability.

"State" is defined for purposes of chapter 57 to include, among other jurisdictions, the several States and "any territory or possession of the United States." 15 U.S.C. § 3002(2). Although Guam is a territory or possession, chapter 57 was enacted after the effective date of section 502 of the Covenant and, accordingly, is not made applicable to the Northern Mariana Islands by operation of that section.

On termination of the trusteeship, the Northern Mariana Islands will become a territory or possession of the United States. At that time it will become a "State" for purposes of chapter 57.

Discussion.

There are few horses and no horse race tracks in the Northern Mariana Islands (or in Guam). There is consequently no need to protect horse racing and on-track betting in the Northern Mariana Islands from competition from or revenue diversion by betting offices in other States.

While establishment of an off-track office in the Northern Mariana Islands to accept wagers on horse races in other jurisdictions is within the realm of possibility, it is highly unlikely that interest in distant horse races sufficient to make such a venture worthwhile would exist in the Northern Mariana Islands. Further, even were such an office established, betting at the track would be a realistic alternative for very few customers of the off-track betting office, since the Northern Mariana Islands is thousands of miles from the nearest horse racing track in the United States. Consequently, allowing such off-track betting would not harm the economic interests of any race track in the United States.

Accordingly, there is no need to make chapter 57 applicable to the Northern Mariana Islands prior to termination of the trusteeship.

Chapter 58. Full Employment and Balanced Growth.

The statutes.

Chapter 58 encourages action by the United States Government to utilize existing programs and to propose new programs to alleviate unemployment, particularly "structural unemployment" in particular regions and industries, and youth unemployment.

Present applicability.

The geographic applicability of chapter 58 is not specified in any of its provisions, but the chapter is concerned with the economy of the Nation in its entirety. Particular actions taken pursuant to the chapter will affect the Northern Mariana Islands to the extent the programs altered by those actions are applicable to the Northern Mariana Islands.*

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*For example, one such program used to promote full employment was the now-repealed Comprehensive Employment and Training Act of 1973 (CETA), Public 92-203, 87 Stat. 839, repealed by Public Law 97-300, § 184(a)(1), 96 Stat. 1322 (1982). See 15 U.S.C. § 3116(b), (c). CETA was applicable to the Northern Mariana Islands. Public Law 92-203, § 601(a)(9), 87 Stat. 839; Covenant § 502(a). Thus, actions taken under CETA pursuant to chapter 58 of title 15 could have affected the Northern Mariana Islands.

Chapter 59. Retail Policies for Natural Gas Utilities.

The statutes.

Chapter 59 encourages State regulatory authorities that establish prices for natural gas sold by utilities to consumers to adopt procedures governing termination of service by those utilities. The procedures, which do not have to be adopted by the State, require prior notice of the shutoff to a consumer and a reasonable opportunity for the consumer to dispute the reasons for termination of service. Special rules are also encouraged to prevent terminations when termination would be especially dangerous to health, for example, during severe winter weather if gas is used for heating.

State regulatory authorities are also encouraged to adopt procedures forbidding utilities from covering expenditures for promotional or political advertising in their charges to consumers.

Unregulated natural gas utilities are encouraged to adopt the procedures for termination of service and the advertising restriction on their own initiative.

Present applicability.

Chapter 59 applies to State natural gas regulatory agencies and to unregulated natural gas utilities. 15 U.S.C. § 3203(a),(c). "State" is not defined by any provision in the chapter and, consequently, must be taken to mean only the fifty States of the Union. Consequently, chapter 59 does not apply in the Northern Mariana Islands.

Discussion.

There is no natural gas utility in the Northern Mariana Islands. With current technology, natural gas is unlikely to become an important fuel in the Northern Mariana Islands unless sources of natural gas are discovered within the Northern Mariana Islands. Further, chapter 59 does not apply to natural gas utilities until annual sales of 10 billion cubic feet are achieved. 15 U.S.C. § 3201(b).

Chapter 60. Natural Gas Policy.

The statutes.

Chapter 60 establishes maximum prices for the sale of natural gas and establishes procedures for the allocation of natural gas in emergencies or shortages.

Present applicability.

The geographic applicability of chapter 60 is not specifically defined by any provision in the chapter. "State," however, is defined for purposes of the chapter to include only the several States and the District of Columbia. 15 U.S.C. § 3301(34). "United States" is defined to include the States and the Outer Continental Shelf. That the territories and possessions of the United States in general and the Northern Mariana Islands in particular are not included within the definitions of "State" or "United States" is ample evidence that Congress did not intend the chapter to apply in the Northern Mariana Islands. Rubenstein v. United States, 153 F.2d 127, 129 (D.C. Cir. 1946).

Discussion.

Natural gas is neither produced nor consumed in significant quantities in the Northern Mariana Islands. Accordingly, there is no need to consider whether chapter 60 ought to apply in the Northern Mariana Islands.

Chapter 61. Soft Drink Interbrand Competition.

The statutes.

Chapter 61 exempts from the antitrust laws agreements which allow soft drink trademark license holders to give licensees exclusive rights to manufacture, distribute, or sell the trademarked soft drink within a specified geographic area.

Present applicability.

The geographic applicability of chapter 61 is not specifically defined by any provision in the chapter. As noted in the discussions of chapters 1 and 2, above, the antitrust laws are applicable to the Northern Mariana Islands. Exemptions from the antitrust laws, such as that contained in this chapter, must be construed to have identical geographic applicability. 2A Sutherland, Statutes and Statutory Construction § 51.02 (C. Sands ed. 1973). Accordingly, chapter 61 is applicable to the Northern Mariana Islands.

Chapter 62. Condominium and Cooperative Conversion Protection and Abuse Relief.

The statutes.

Chapter 62 provides persons renting apartments some rights when those apartments are converted to condominiums or cooperatives, forcing the tenant to either buy the apartment or move out. Although most responsibility for assisting such tenants remains with State and

local governments, chapter 62 does authorize the United States Department of Housing and Urban Development to provide quick assistance to tenants who want to buy their apartments. The chapter also protects buyers of condominium or cooperative units against purchase agreements that are unconscionable.

Present applicability.

No provision in chapter 62 delineates the geographic applicability of the chapter. "State," however, is defined for purposes of the chapter to include, among other jurisdictions, the several States and the territories and possessions of the United States. 15 U.S.C. § 3603(23). A definition of "State" to include a particular jurisdiction for purposes of a statute is strong evidence that Congress intended the statute to apply in that jurisdiction. Rubenstein v. United States, 153 F.2d 127, 129 (D.C. Cir. 1946). Since Guam is a territory or possession, chapter 62 applies to condominium and apartment conversions on Guam.

Although chapter 62 is applicable to the several States and Guam, it was enacted after the effective date of section 502 of the Covenant. Consequently, chapter 62 is not made applicable to the Northern Mariana Islands by operation of section 502.

On termination of the trusteeship, the Northern Mariana Islands will become a territory or possession of the United States. At that time, chapter 62 will become applicable to condominium and cooperative conversions in the Northern Mariana Islands.

Discussion.

Chapter 62 applies only to rental housing containing five or more residential units, for example, a building containing five apartments. 15 U.S.C. § 3603(5), (10). Very few rental properties in the Northern Mariana Islands include five or more units. No conversion of any such property to a condominium or cooperative project is known to have taken place there. Accordingly, no compelling need requires chapter 62 to be made applicable to the Northern Mariana Islands prior to termination of the trusteeship.

Chapter 63. Technology Innovation.

The statutes.

Chapter 63 encourages technological innovation and dissemination of technological developments through the establishment of centers for industrial technology, supported by grants from the United States Department of Commerce, and by the transfer of federally owned or

originated technology to State and local governments and to the private sector.

Present applicability.

The geographic applicability of chapter 63 is not defined specifically by any of its provisions or in its legislative history. See 1980 U.S. Code Cong. & Ad. News 4892 et seq.

The goals of chapter 63 are quite broad and the chapter can be read to allow establishment of a center for industrial technology in the Northern Mariana Islands and the transfer of federally owned or originated technology to the government of the Northern Mariana Islands or to the private sector in the Northern Mariana Islands.

Chapter 64. Methane Transportation Research, Development and Demonstration.

The statutes.

Chapter 64 directs the United States Secretary of Energy to establish a program to develop methane-powered motor vehicles.

Present applicability.

The only question of geographic applicability that arises with respect to chapter 64 is whether individuals and entities in the Northern Mariana Islands are eligible to participate in the research, development, and demonstration program as grantees, contractors, or loan recipients. That question is not specifically answered by any provision in the chapter. Regulations issued pursuant to chapter 64 list a wide variety of individuals and entities eligible to participate, but does not specify whether those individuals or entities must reside or be located within particular jurisdictions in order to be eligible. 10 C.F.R. § 478.2 (1984).

Chapter 65. Product Liability Risk Retention.

The statutes.

A manufacturer and others distributing or selling a product may be found liable for damages for certain injuries caused by that product. Commonly, insurance is purchased to protect against such liability. If the potentially liable firm has sufficient assets, it may "self-insure," that is, assume the risk of liability itself and pay any damages awarded against it from its own assets.

Risk retention groups allow member firms to combine assets for insuring each of the member firms against liability. Chapter 65 allows the formation of such cooperatives to insure against product

liability, and exempts such groups from most (but not all) State insurance laws, other than in the State in which the group is chartered. A group, to obtain this exemption, must be chartered in one of the States, Bermuda, or the Cayman Islands,* and must meet the capitalization requirements of at least one State.

Present applicability.

"State" is defined for purposes of chapter 65 to include only the several States and the District of Columbia. 15 U.S.C. § 3901(a)(6). Consequently, a risk retention group chartered in the Northern Mariana Islands is not exempt from State laws in the United States, if it carries on activities in those States. Conversely, a risk retention group chartered in one of the States, Bermuda, or the Cayman Islands, and operating in the Northern Mariana Islands is not exempt from applicable laws of the Northern Mariana Islands.

Chapter 66. Promotion of Export Trade.

The statutes.

Chapter 66 promotes exports from the United States, principally by small- and medium-sized firms and by export trade associations. The United States Department of Commerce is assigned the role of encouraging the formation of export trade associations and export trading companies.

The Department of Commerce is also permitted by this chapter to confer immunity from the federal antitrust laws on particular export trade activities not having significant anticompetitive effects within the United States.

Present applicability.

For purposes of the provisions of chapter 66 generally encouraging export trade, "State" and "United States" are defined specifically to include the Northern Mariana Islands. 15 U.S.C. § 4002(5), (6). Accordingly, persons and firms in the Northern Mariana Islands are eligible for assistance from the Department of Commerce in establishing export businesses. Further, exports from the Northern Mariana Islands (other than exports to other parts of the United States) are exports from the United States for purposes of the chapter.

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*Prior to enactment of chapter 65, risk retention groups were commonly organized under the laws of Bermuda or the Cayman Islands.

Any "person" may apply for a certificate of exemption from the antitrust laws for export trading activities. 15 U.S.C. §§ 4011-4013. "Person" is defined to include, among others, any individual who is a resident of the United States. Id. § 4021(5). "United States," however, is not defined for purposes of these provisions.* "Export trade" is defined to include "exports from the United States, or any territory thereof to any foreign nation." 15 U.S.C. § 4021(1). While Guam is a territory of the United States, chapter 66 was enacted after the effective date of section 502 of the Covenant. Consequently, exports from the Northern Mariana Islands are not included in "export trade" by operation of section 502.

Nonetheless, as noted in the discussion of chapter 1 and 2, above, the antitrust laws apply to the Northern Mariana Islands. Exemptions from the antitrust laws, such as that contained in this chapter, must be construed to have identical geographic applicability. 2A Sutherland, Statutes and Statutory Construction § 51.02 (C. Sands ed. 1973). Further, Department of Commerce regulations establishing procedures for issuance of certificates of exemption define "United States" specifically to include the Northern Mariana Islands. 15 C.F.R. § 325.2(p) (1984). Administrative interpretations are accorded deference in construing statutes. See Sawczyk v. United States Coast Guard, 499 F. Supp. 1034. (W.D.N.Y. 1980); 2A Sutherland, Statutes and Statutory Construction § 49.06 (C. Sands ed. 1973). Accordingly, firms in the Northern Mariana Islands are eligible for the antitrust exemption authorized by chapter 66.

Chapter 68.** Land Remote-Sensing Commercialization.

The statutes.

The Landsat satellites orbiting the Earth in space gather a wide variety of data about the natural resources and other features of the Earth and its regions. Chapter 68 establishes policies and procedures for the collection and use of that data and contains requirements for the private marketing of the data. The chapter also provides for continued federal ownership of the Landsat system and of unenhanced data collected by the system. The operation of private remote-sensing space systems is prohibited unless a license has first been obtained from the Secretary of Commerce. The Federal Government

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*The definition of "United States" for purposes of the provisions of this chapter encouraging export trade does not apply to the provisions of the chapter related to antitrust immunity. House Conference Report 97-924, at 18 (1984).

**There is no chapter 67 in title 15.

is prohibited from transferring its weather satellite systems to the private sector.

Present applicability.

Contracts for the marketing of unenhanced Landsat data may be made only with "a United States private sector party (as defined by the Secretary [of Commerce])." 15 U.S.C. § 4212(a). See also id. § 4212(d). The Secretary has not yet issued regulations defining who is "a United States private sector party," so it is not now known if firms in the Northern Mariana Islands may qualify for Landsat data marketing contracts.

Landsat data must be sold to "all potential buyers on a nondiscriminatory basis." Id. § 4224(a)(3). See also id. § 4271.

"United States private sector parties" are also eligible for licenses to operate private remote-sensing satellite systems. Id. § 4241(a)(1). Again, whether firms in the Northern Mariana Islands are eligible depends upon the definition of "United States private sector parties" to be issued by the Secretary of Commerce. The prohibition against operating such a system without a license extends to any person "who is subject to the jurisdiction or control of the United States." Persons in the Northern Mariana Islands are subject to the jurisdiction of the United States. Trusteeship Agreement, Art. 3; Covenant §§ 101, 1003(c). Consequently, persons in the Northern Mariana Islands may not operate a private remote-sensing satellite system without a license issued by the Secretary of Commerce.

TITLE 16. CONSERVATION.

The Commission's recommendation, The Magnuson Fishery Conservation and Management Act, in the Recommendations section of this report, discusses chapter 38 of title 16. See also the recommendation, Tuna fisheries, in the Recommendations section.

Chapter 12 of title 16, regarding the federal regulation and development of power, and chapter 33, on coastal zone management, are discussed below.

The Commission's staff examined the other chapters in title 16, but did not compile and edit its research for inclusion in this report. No significant problems in the application of these chapters to the Northern Mariana Islands were uncovered by the staff's research or otherwise brought to the Commission's attention.

Chapter 12. Federal Regulation and Development of Power.

The statute.

This chapter, sections 791a et seq. of title 16, contains the Federal Power Act. The Act authorizes the Federal Energy Regulatory Commission (successor to the Federal Power Commission) to issue licenses for the construction, operation, and maintenance of hydroelectric power projects. Where navigable waterways are affected, the Corps of Engineers gives its opinion on the project as part of the Federal Energy Regulatory Commission (FERC) permit process under the Federal Power Act (rather than through the Army Corps of Engineers or Environmental Protection Agency permit processes). See 16 U.S.C. § 797(e); 33 C.F.R. §§ 209.140, 320.3(f) (1984).

The FERC requires that environmental concerns be considered in its application process for projects over 1.5 megawatts (1,500 kilowatts). 18 C.F.R. § 4.50 (1984). For hydroelectric projects of 1.5 megawatts or less, the FERC has the authority to expedite the permit process. 16 U.S.C. § 2705. For these projects, only a Clean Water Act permit is required. 18 C.F.R. § 4.61 (1984). Small hydropower plants not designed primarily for generation of electricity and certain other small hydropower projects can obtain an exemption from licenses with only minor environmental reporting. See id. §§ 4.90 et seq., 4.101 et seq..

Present applicability.

The Federal Power Act defines "State" to include any organized Territory of the United States. 16 U.S.C. § 796(6). Congress has enacted an organic act establishing a civil government for Guam. 48 U.S.C. §§ 1421 et seq. See United States v. Standard Oil Co., 404 U.S. 558, 559 n.2 (1972). Guam is thus an "organized" territory of the United States. Guam is not, however, incorporated. 48 U.S.C. § 1421a. Incorporated territories are destined for Statehood. A distinction is sometimes made between "Territory" and "territory," with the capitalized form deemed to apply only to incorporated territories and the lower-case form deemed to mean only unincorporated territories. See, for example, House Report 93-507, reprinted at 1973 U.S. Code Cong. & Ad. News 2730, 2732; House Report 1521, 90th Cong., 2d Sess., Appendix (1968); House Committee on Interior and Insular Affairs, Resource Materials Used in the Preparation of the Report of the Commission on Application of Federal Laws to Guam 182 (Committee print 1952). The capitalized form, however, has been used so often to embrace unincorporated areas that whether the word is capitalized is not a reliable indication of congressional intent. See, for example, Public Law 90-201, § 2, 81 Stat. 584 (1967), 21 U.S.C. § 601(g); United States v. Standard Oil Co., above; United States v. Villarin Gerena, 553 F.2d 723, 724-26

(1st Cir. 1977); Moreno Rios v. United States, 262 F.2d 68, 71-72 (1st Cir. 1958). See also Garcia v. Friesecke, 597 F.2d 284 (1st Cir. 1979), certiorari denied, 444 U.S. 940 (1979).

Some authority supports the conclusion that the Federal Power Act is applicable to Guam. The Commission on the Application of Federal Laws to Guam in 1951 concluded the Act applied to Guam. Report of the Commission on the Application of Federal Laws to Guam, House Document 212, 82d Cong., 1st Sess. 13, 18 (1951). See also House Committee on Interior and Insular Affairs, Resource Materials Used in the Preparation of the Report of the Commission on Application of Federal Laws to Guam 115-16 (Committee print 1952). The Commission's staff supported this conclusion by relying on a 1925 opinion of the Solicitor of the Department of the Interior. Id. 116. That opinion held the Act applicable within Puerto Rico, even though Puerto Rico was not then considered a "Territory," but only an "Insular Possession." 51 Decisions of the U.S. Dep't of Interior 53.

In addition, the Federal Power Act was originally derived from the Rivers and Harbors Act of 1899, which does apply to Guam and the Northern Mariana Islands. See the recommendation, Rivers and Harbors Act, in the Recommendations section of this report.

For the foregoing reasons, the Federal Power Act should be regarded as applicable to the Northern Mariana Islands.*

Discussion.

Little, if any, potential for hydroelectric power generation is apparent in the Northern Mariana Islands.** Accordingly, even though some doubt may exist as to the present applicability of the

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*In its January 1982 interim report to Congress, the Commission recommended enactment of legislation to allow citizens of the Northern Mariana Islands to be treated as citizens of the United States for purposes of meeting citizenship requirements for Federal Energy Regulatory Commission licenses prior to termination of the trusteeship. In 1983 Congress enacted Public Law 98-213, 97 Stat. 1459. Sections 19 to 23 of that statute allow the President by proclamation to declare that citizenship requirments in particular federal laws are not applicable to citizens of the Northern Mariana Islands. In 1984 the President removed for citizens of the Northern Mariana Islands this particular citizenship restriction. Presidential Proclamation 5207, § 4(h), 49 Fed. Reg. 24365.

**Should a project subject to the Act ever be contemplated for the Northern Mariana Islands, it would almost certainly be a small-scale project entitled to expedited treatment under the Act.

Federal Power Act to the Northern Mariana Islands, no legislation is here recommended to confirm the Act's applicability to the Northern Mariana Islands.

The United States Army Corps of Engineers has recently been given the authority to conduct studies in the Northern Mariana Islands on hydroelectric power generation. Public Law 98-213, § 13, 97 Stat. 1459 (1983).

Chapter 33. Coastal Zone Management.

The statute.

The Coastal Zone Management Act of 1972, 16 U.S.C. §§ 1451 et seq., was passed to encourage development of national land use policies for coastal lands and adjacent waters by providing substantial federal financing as an incentive. Once a State plan is approved, even federal programs must be consistent, to the maximum extent practicable, with the State program and applicants for a federal permit or license must show the planned activity will comply with State plan requirements.

Congress itemized many ecological, cultural, historic, esthetic, and economic factors States should consider in their plans:

> (1) the protection, within the coastal zone, of natural resources, including wetlands, floodplains, estuaries, beaches, dunes, barrier islands, coral reefs, and fish and wildlife and their habitat;
>
> (2) the management of coastal development to minimize loss of life and property caused by improper development in flood-prone, storm surge, geological hazard, and erosion-prone areas and in areas of subsidence and saltwater intrusion and by destruction of natural protective features such as beaches, dunes, wetlands, and barrier islands;
>
> (3) priority consideration for coastal-dependent uses and orderly processes for siting major facilities related to national defense, energy, fisheries development, recreation, ports and transportation, and the location, to the maximum extent practicable, of new commercial and industrial developments in or adjacent to areas where such development already exists;
>
> (4) public access to the coasts for recreation purposes;

(5) assistance in the redevelopment of deteriorating urban waterfronts and ports, and sensitive preservation and restoration of historic, cultural, and esthetic coastal features; and

(6) assistance to support comprehensive planning, conservation, and management for living marine resources, including planning for the siting of pollution control and aquaculture facilities within the coastal zone, and improved coordination between State and Federal coastal zone management agencies and State and wildlife agencies.

See 16 U.S.C. § 1452(2).

The Commerce Department's National Oceanic and Atmospheric Administration administers federal funding under the Act. The Administration also approves State coastal zone management programs and insures that federal activities are consistent with State plans. See 15 C.F.R. parts 923, 930 (1985).

Present applicability.

The Coastal Zone Management Act is specifically applicable to the Northern Mariana Islands. 16 U.S.C. § 1453(4).

Discussion.

Many areas of the United States have more rivers and lakes, more coastline, and more wetlands than does the Northern Mariana Islands. In few jurisdictions, however, are the areas affected by federal coastal zone management laws such a large proportion of the total area of the jurisidiction. Thus, for example, the zone regulated under the Coastal Zone Management Act in California may extend only a few miles inland from the shore, so that only a small portion of the State is affected. In the Northern Mariana Islands, by contrast, a few miles from any shore of an island will embrace the entire island. Land uses anywhere on any of the small islands may affect coastal waters, so that all land areas in the Northern Mariana Islands are designated as within the coastal zone. 2 Commonwealth Register 848, 878-79 (1980).

The ocean and lagoons of the Northern Mariana Islands are important in the daily lives of virtually every family in the Northern Mariana Islands, so that their protection and wise use is of great importance to all.

Island environments are notoriously fragile. Island resources are limited and particularly susceptible to over-exploitation. See generally J. McEachern & E. Towle, Ecological Guidelines for Island Development 7-16 (1974). The Northern Mariana Islands is now

undergoing relatively rapid economic development, fueled by the natural desire of the people of the Northern Mariana Islands for an improved standard of living and by the attractiveness of the islands to tourists, particularly tourists from Japan. Care is essential to ensure that unplanned or badly planned development does not have long-term adverse effects on the environment of the Northern Mariana Islands.

The Coastal Zone Management Act is already enforced locally (as provided in the Act) by the Coastal Resources Management Office established by a Northern Mariana Islands executive order in 1980. 2 Commonwealth Register 848. The Coastal Resources Management Program operated by that office coordinates review of all permit activities, including those under federal law, in the Northern Mariana Islands.

The program in effect in the Northern Mariana Islands insures that permitted activities meet the standards developed for orderly use and development of coastal resources. Activities in the Northern Mariana Islands requiring permits are (1) major projects anywhere in the islands with the potential to affect directly and significantly coastal waters, and (2) projects in areas of particular concern, including certain lagoons and reefs, wetlands and mangrove areas, shorelines (from the mean high water mark inland 150 feet) on Saipan, Tinian and Rota, and commercial ports and industrial areas on those three islands.

An office such as that established under the Coastal Zone Management Act and the Commonwealth's executive order is necessary to integrate local and federal permit processes. Although discussion continues in the Northern Mariana Islands on the best approach to accomplish this--a legislatively-created agency has been suggested--,* support exists for the basic concept of a permit clearinghouse to expedite environmental decision-making and resolve conflicts between competing interests for the balanced and intelligent utilization of coastal zones.

Accordingly, no changes are recommended in the present applicability of the coastal zone management laws to the Northern Mariana Islands.

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*Coastal Resources Red Tape Knocked, Pacific Daily News (Guam), Commonwealth Focus supplement, April 23, 1982, at 7A.

TITLE 17. COPYRIGHTS

The statutes.

The federal protection afforded copyrights derives from Article I, Section 8, Clause 8, of the United States Constitution, granting Congress the power:

> To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

A copyright is protection extended to published literary property. Federal copyright protection covers

> original works of authorship fixed in any tangible medium of expression, now known or later developed, from which they can be perceived, reproduced, or otherwise communicated, either directly or with the aid of a machine or device.

17 U.S.C. § 102(a). Works that may be copyrighted include literary works; musical works, including any accompanying words; dramatic works, including any accompanying music; pantomimes and choreographic works; pictorial, graphic, and sculptural works; motion pictures and other audiovisual works; and sound recordings. Id. The purpose of the copyright laws is to ensure the maximum public dissemination of knowledge by recognizing the author's continuing property rights after disclosure of his or her ideas to the public in some tangible form. See generally M. Nimmer, On Copyright § 2.01[A] (1981).

The copyright laws were completely revised in 1976. Those laws specify the works that may be copyrighted, the duration of copyrights, the rules governing copyright ownership and transfer, and the protections afforded to copyright owners.

Present applicability.

For purposes of the copyright laws, "United States" is defined to include "the organized territories under the jurisdiction of the United States Government." 17 U.S.C. § 101. Guam is an organized territory of the United States.* Further, section 1421n of title 48

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*An organized territory is a territory that has received an "organic act" from Congress. United States v. Standard Oil Co., 404 U.S. 558, 559 n.2 (1972). Congress enacted an organic act for Guam on August 1, 1950. See 64 Stat. 384, codified as amended at 48 U.S.C. §§ 1421 et seq.

of the United States Code specifically provides that the "laws of the United States relating to copyrights, and to the enforcement of rights arising thereunder, shall have the same force and effect in Guam as in the continental United States." By operation of section 502(a)(2) of the Covenant, the copyright laws of the United States also apply in the Northern Mariana Islands.*

Discussion.

The purposes underlying the copyright laws are as important in the Northern Mariana Islands as in other areas of the United States. The author has the same interests in obtaining profits from his or her creative works. Society has the same interests in allowing intellectual property a certain degree of protection.

Were the federal copyright laws not applicable in the Northern Mariana Islands, the Northern Mariana Islands could establish its own copyright laws. The cost of enacting and administering those laws would be high, however, and no benefits from local control over copyrights are apparent. Given the relatively small population of the Northern Mariana Islands, few copyrights are likely to be sought. A separate system of copyright laws would raise questions as to the protection afforded United States and foreign rights in the Northern Mariana Islands, and that afforded Northern Mariana Islands rights in the United States and in foreign countries.

The federal copyright laws accordingly should continue to apply in the Northern Mariana Islands. No legislation is necessary for the continued application of these laws in the Northern Mariana Islands.

TITLE 18. CRIMES AND CRIMINAL PROCEDURE.

Part I. Crimes.

Note. See also, in the Recommendations section of this report, the recommendations Importation of fruit bats, Customs crimes, Exportation of arms, liquors and narcotics to Pacific Islands,

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*Even were the Northern Mariana Islands not considered part of the United States, residents of the Northern Mariana Islands would be able to obtain protection for their works in the United States under those laws. Foreign nationals may obtain United States copyrights. 17 U.S.C. § 104. But the rights of foreign nationals and of United States citizens to be protected against infringement in the Northern Mariana Islands were the Northern Mariana Islands not considered part of the United States would be questionable. See Robert Stigwood Group Ltd. v. O'Reilly, 530 F.2d 1096, 1101 (2d Cir. 1976).

Lottery prohibitions, and Technical amendments to title 18 of the United States Code, Crimes and Criminal Procedure.

The statutes.

Criminal penalties, generally fines and/or imprisonment, are prescribed for particular conduct for the most part by State and local laws, not by federal law. Thus, for example, murder is proscribed in all parts of the United States by the criminal laws of the various States, territories, and possessions of the United States. No federal law, however, forbids murder in general terms.*

Although the control of individual conduct through application of criminal sanctions is largely the responsibility of the States, territories, or possessions of the United States, a variety of federal criminal statutes does prohibit conduct inimical to the interests of the United States.

Title 18 of the United States Code, Crimes and Criminal Procedure, has been described as so chaotic and lacking in logical organization that it impedes any effort to make consistent legislative policy. Schwarz, Study Draft of a Proposed Federal Criminal Code: Progress and Issues in National Commission on Reform of Federal Criminal Laws, Study Draft of a New Federal Criminal Code xxv, xxvi (1970). Since the National Commission on Reform of Federal Criminal Laws issued its final report in 1971, Congress has worked on a comprehensive overhaul of the entire criminal code. Its efforts, however, have thus far not resulted in enacted legislation. See 41 Congressional Quarterly Weekly Report 1559 (1983); 40 Congressional Quarterly Weekly Report 1018 (1982).

Most federal crimes are defined in part I (sections 1 to 2520) of title 18. Only those crimes included in part I are here addressed.

Other federal statutes, scattered throughout the United States Code, make criminal conduct related to particular subjects. See, for example, among the immigration and naturalization laws of the United States, sections 1321 to 1328 of title 8, establishing criminal penalties for offenses against those laws; and, among the social security laws, sections 408, 1307, 1383a, 1395nn, and 1396h of title 42, establishing criminal penalties for offenses against those laws.

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*But federal laws do forbid the murder of specified federal officials and other particular classes of persons. See 18 U.S.C. §§ 351 (Members of Congress); 1114 (officers and employees of the United States); 1116 (foreign officials and others); and 1751 (the President and Vice President).

These statutes are addressed in connection with the other laws of which they are a part.

Below is a chapter-by-chapter summary of the federal criminal statutes in part I of title 18:*

Chapter 1. General provisions (§§ 1-15). This chapter defines terms such as "United States," "felony," "misdemeanor," and "accessory after the fact" as used in the federal criminal laws.

Chapter 2. Aircraft and motor vehicles (§§ 31-35). This chapter makes criminal the destruction of aircraft, aircraft facilities (for example, an airport control tower), motor vehicles, or motor vehicle facilities (for example, a trucking terminal) employed in interstate or foreign commerce.

Chapter 3. Animals, birds, fish, and plants (§§ 41-47). This chapter makes criminal hunting, fishing, and trapping in federal wildlife refuges, importing certain animals regarded as injurious, and specified other activities related to animals and plants. See the recommendation, Importation of fruit bats, in the Recommendations section of this report.

Chapter 5. Arson (§ 81). This chapter makes criminal willfully and maliciously setting fire to property on federal lands, on the high seas, and in certain other areas.

Chapter 7. Assault (§§ 111-114). This chapter makes criminal the assault of certain federal officers and employees and specified foreign officials and the commission of assaults on federal lands, on the high seas, and in certain other areas.

Chapter 9. Bankruptcy (§§ 151-155). This chapter makes criminal specified offenses against the federal bankruptcy laws.

Chapter 11. Bribery, graft, and conflict of interest (§§ 201-224). This chapter makes criminal bribery of federal officers or employees or the solicitation of

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*The only even-numbered chapters in part I of title 18 are 2, 12, 18, 40, 42, 44, 50, 84, 96, 102, 110, and 114. Even-numbered chapters were omitted in the original organization of part I to allow later insertion of additional chapters in proper alphabetical position.

compensation by a federal officer or employee for services in any matter in which the United States is a party or has a direct interest. Also made criminal is participation as a federal officer or employee in any matter in which the officer or employee has a personal financial interest. In addition, the chapter makes unlawful bribery by any person intended to influence sporting contests.

Chapter 12. Civil disorders (§§ 231-233). This chapter makes criminal conduct facilitating the use of firearms, explosives, or incendiary devices in civil disorders or conduct interfering with a fireman or law enforcement officer during a civil disorder.

Chapter 13. Civil rights (§§ 241-246). This chapter makes criminal conduct intended to deprive a person of his or her civil rights. Among the many rights protected are the right to vote; the right to enjoy public facilities free from discrimination on account of race, color, religion, or national origin; the right to participate in the benefits of federal programs; and the right to serve on juries.

Chapter 15. Claims and services in matters affecting government (§§ 285-292). This chapter makes criminal filing false or fraudulent claims against the Federal Government.

Chapter 17. Coins and currency. (§§ 331-337). This chapter makes criminal the mutilation of United States coins and notes, and certain other offenses affecting the coins and currency of the United States.

Chapter 18. Congressional assassination, kidnapping and assault (§ 351). This chapter makes criminal killing, kidnapping, or assaulting members (or members-elect) of Congress.

Chapter 19. Conspiracy (§§ 371-372). This chapter makes criminal conspiracies to commit an offense against the United States, to defraud the United States, or, by force, intimidation, or threat, to interfere with the official duties of an officer of the United States.

Chapter 21. Contempt (§§ 401-402). This chapter grants courts of the United States power to punish summarily by fine or imprisonment misbehavior in their presence or vicinity; misbehavior by their officers in their official transactions; and disobedience of their

lawful orders. Disobedience of a court order may also be prosecuted as criminal contempt if the disobedience independently is an offense against the laws of the United States or the laws of the State in which the disobedience occurred.

Chapter 23. Contracts (§§ 431-443). This chapter makes criminal the entering into contracts of various specified types by federal officials and the execution of contracts for particular purposes between the United States and particular classes of individuals. For example, members of Congress may not enter into contracts with the United States.

Also made criminal is destruction of certain records related to war contracts.

Chapter 25. Counterfeiting and forgery (§§ 471-509). This chapter makes criminal the forging, altering, or counterfeiting of notes, obligations, securities, and coins of the United States or of foreign countries; ship's papers; public records and seals of agencies of the United States; and various other documents. Also made criminal is the manufacture or possession of plates, dies, and other paraphernalia useful for such forgery, alteration, and counterfeiting.

Chapter 27. Customs (§§ 541-552). This chapter makes criminal smuggling and other conduct intended to evade payment of customs duties or other restrictions on the importation of articles into the United States. See the recommendation, Customs crimes, in the Recommendations section of this report.

Chapter 29. Elections and political activities (§§ 592-607). This chapter makes criminal various activities impeding the conduct of fair and free elections or otherwise corrupting the political process.

Chapter 31. Embezzlement and theft (§§ 641-665). This chapter makes criminal embezzlement or theft of money or property belonging to (or in the custody of) the United States.

Chapter 33. Emblems, insignia, and names (§§ 700-715). This chapter makes criminal the misuse or misappropriation of a variety of federally-protected emblems, insignia, and names, ranging from military insignia to the 4-H Club emblem, and from the Great Seal of the United States to Smokey Bear and Woodsy Owl.

Chapter 35. Escape and rescue (§§ 751-757). This chapter makes it criminal to escape from the custody of the United States or to help someone else escape from federal custody.

Chapter 37. Espionage and censorship (§§ 792-799). This chapter makes criminal the unauthorized disclosure of national defense or classified information and the violation of certain National Aeronautics and Space Administration regulations.

Chapter 39. Explosives and other dangerous articles (§ 836). This chapter makes criminal the unauthorized transportation of fireworks into a State, Territory, or possession where their use or sale is forbidden.

Chapter 40. Importation, manufacture, distribution, and storage of explosive materials (§§ 841-848). This chapter makes it criminal for anyone to engage in the business of importing, manufacturing, or dealing in explosives without a federal license. Also made criminal are various other activities related to the distribution, use, or possession of explosives.

Chapter 41. Extortion and threats (§§ 871-878). This chapter makes criminal threats against the President; extortion by a federal officer or employee; demand or receipt of blackmail for not revealing violations of federal law; receipt of kickbacks from persons employed in constructing public works; and transmission of extortion threats in interstate or foreign commerce or through the Postal Service.

Chapter 42. Extortionate credit transactions (§§ 891-896). This chapter makes criminal the extension of credit on the understanding that failure to make timely repayment could result in the use of violence or other unlawful acts against the person, reputation, or property of the debtor or another person.

Chapter 43. False personation (§§ 911-917). This chapter makes criminal false representation of oneself as a citizen of the United States, an officer or employee of the United States, a creditor of the United States, a foreign diplomat or official, or a member or agent of a 4-H Club or the Red Cross.

Chapter 44. Firearms (§§ 921-928). This chapter makes criminal the importation, manufacture, or sale of firearms without a federal license.

Chapter 45. Foreign relations (§§ 951-970). This chapter makes criminal acting as an agent of a foreign government (unless one is a diplomat) without first notifying the Secretary of State; publication by a federal employee of diplomatic codes and correspondence; correspondence by a United States citizen to a foreign government intended to influence the conduct of that government in a dispute with the United States, unless the citizen is seeking redress of injuries sustained by that citizen from the foreign government; lying under oath to influence the conduct of a foreign government or the United States, to cause injury to the United States; engaging in certain financial transactions with foreign governments; conspiring to injure the property of a friendly foreign government; serving in a foreign armed force at war with or taking part in a military expedition against a nation with which the United States is at peace; providing armed vessels for use in a war in which the United States is neutral; and exporting arms, liquors, and narcotics to certain Pacific Islands. See the recommendation, Exportation of arms, liquors and narcotics to Pacific Islands, in the Recommendations section of this report.

Chapter 47. Fraud and false statements (§§ 1001-1027). This chapter makes criminal the making of false or fraudulent statements to the injury of the United States and its departments and agencies and the making of false or fraudulent statements by federal officials in the course of their work.

Chapter 49. Fugitives from justice (§§ 1071-1074). This chapter makes criminal hiding a person fleeing arrest by or escaping the custody of the United States. It also makes criminal travelling in interstate or foreign commerce to avoid prosecution, giving testimony, or confinement under the laws of any jurisdiction.

Chapter 50. Gambling (§§ 1081-1084). This chapter makes criminal offshore gambling operations by persons subject to the jurisdiction of the United States or on United States vessels.

Chapter 51. Homicide (§§ 1111-1117). This chapter makes unlawful the killing or attempted killing of federal judges and law enforcement officials, foreign officials, official guests of the United States, or internationally protected persons. Also made criminal is misconduct or negligence by ship officers or owners that results in loss of life.

Chapter 53. Indians (§§ 1151-1165). This chapter makes criminal various offenses committed on Indian reservations or in certain other Indian areas.

Chapter 55. Kidnapping (§§ 1201-1202). This chapter makes criminal kidnapping affecting interstate or foreign commerce and kidnapping of foreign officials, official guests of the United States, or internationally protected persons.

Chapter 57. Labor (§ 1231). This chapter makes criminal the transportation in interstate or foreign commerce of any person employed to interfere by force or violence with collective bargaining or a lawful strike.

Chapter 59. Liquor traffic (§§ 1261-1265). This chapter makes criminal the shipment of liquor into States, Territories, or Possessions where prohibition is in effect. Also made criminal is shipment of liquor without proper labelling, delivery of liquor by a common carrier to a person other than the designated cosignee, and C.O.D. shipment of liquor by a common carrier.

Chapter 61. Lotteries (§§ 1301-1307). This chapter makes criminal importing lottery tickets or related matter into the United States, or carrying them in interstate or foreign commerce or via common carrier or the Postal Service. Also made criminal is the furnishing of assistance to lotteries by postal employees, the radio broadcast of lottery information, and lottery participation by certain financial institutions. The criminal penalties do not apply to certain fishing contests and State-run lotteries. See the recommendation, Lottery prohibitions, in the Recommendations section of this report.

Chapter 63. Mail fraud (§§ 1341-1343). This chapter makes criminal the use of the postal service or of a telephone, telegraph, radio, or television to obtain money or property by fraudulent means.

Chapter 65. Malicious mischief (§§ 1361-1364). This chapter makes criminal injury to or destruction of any property of the United States; communication lines, stations, or systems; or buildings, structures, or vessels within the maritime or other special jurisdiction of the United States. Interference with the exportation of articles from the United States to foreign countries is also made criminal.

Chapter 67. Military and navy (§§ 1381-1385). This chapter makes criminal enticing or procuring a member of the Armed Forces to desert, or concealing a deserter; unlawful entry into a military or naval installation; and the unauthorized use of any part of the Army or Air Force as a posse (that is, as a force to assist law enforcement authorities in keeping the peace or capturing a felon).

Chapter 69. Nationality and citizenship §§ 1421-1429). This chapter makes criminal the negligent failure of a clerk of court to pay over naturalization or alien registration fees to the United States; the collection of fees beyond those authorized; the misuse, counterfeiting, falsifying, or sale of citizenship or naturalization papers; the impersonation of another person in naturalization proceedings; and various other offenses against the naturalization laws.

Chapter 71. Obscenity (§§ 1461-1465). This chapter makes criminal mailing, importing, or transporting in interstate or foreign commerce obscene materials or articles, or drugs or other articles used for inducing abortion.

Chapter 73. Obstruction of justice (§§ 1501-1511). This chapter makes criminal obstruction of or assault on any officer of the United States authorized to serve process and on United States extradition officers. Also made criminal are threatening or corrupting United States court officers, jurors, or witnesses; attempting to influence a grand or petit jury decision by means of a written communication to a juror; obstructing administrative proceedings; stealing or altering court records; acknowledging bail in the name of another person without that person's consent; picketing or parading in or near a courthouse or the residence of a judge, juror, witness, or court officer; violating the secrecy of a grand or petit jury; obstructing exercise of an individual's rights or performance of an individual's duties under a court order; or obstructing federal criminal investigations of or State law enforcement activities against illegal gambling.

Chapter 75. Passports and visas (§§ 1541-1546). This chapter makes criminal the unlawful, use, forgery, alteration, or counterfeiting of United States passports or visas.

Chapter 77. Peonage and slavery (§§ 1581-1588). This chapter makes criminal the holding of a person in peonage or slavery or otherwise participating in the slave trade.

Chapter 79. Perjury (§§ 1621-1623). This chapter makes criminal lying under oath in any case in which a law of the United States allows an oath to be administered or before a grand jury or court of the United States.

Chapter 81. Piracy and privateering (§§ 1651-1661). This chapter makes criminal the commission of piracy on the high seas and various related offenses.

Chapter 83. Postal Service (§§ 1691-1734). This chapter makes criminal a wide variety of activities interfering with the integrity or movement of the mails or with the federal postal monopoly.

Chapter 84. Presidential assassination, kidnapping, and assault (§§ 1751-1752). This chapter makes criminal killing, kidnapping, assaulting, or attempting or conspiring to kill or kidnap the President of the United States, the Vice President, or the next in line of succession to the office of President, the President-elect, or the Vice President-elect. Also made criminal is unauthorized entrance into any temporary residence of the President.

Chapter 85. Prison-made goods (§§ 1761-1762). This chapter makes criminal the transportation of prison-made goods in interstate or foreign commerce or in improperly labelled packages.

Chapter 87. Prisons (§§ 1791-1792). This chapter makes criminal the introduction of contraband, firearms, explosives, or other dangerous instrumentalities into a federal prison and the instigation of a mutiny or riot at a federal prison.

Chapter 89. Professions and occupations (§ 1821). This chapter makes criminal the transportation of dentures without the authorization of a licensed dentist into a State or territory where local law prohibits the supplying of dentures by persons other than licensed dentists.

Chapter 91. Public Lands (§§ 1851-1863). This chapter makes criminal a wide variety of activities adversely affecting lands owned by the Federal Government.

Chapter 93. Public officers and employees (§§ 1901-1923). This chapter makes criminal various activities by federal officers and employees harmful to the public interest. Among the activities proscribed are unauthorized disclosure of confidential information; trading in the funds, debts, or public property of the United States or a State; using federal funds to lobby members of the United States Congress; interfering with civil service examinations; participating in a strike against the Federal Government; and making a false statement to obtain certain federal compensation.

Chapter 95. Racketeering (§§ 1951-1955). This chapter makes criminal interference with commerce by robbery, extortion, or threat of physical violence. It also makes criminal travel in interstate or foreign commerce, or use of any interstate or foreign commerce facility or of the mails, to distribute the proceeds of or to promote or establish illegal gambling, prostitution, or trade in liquor or narcotics. Also made criminal are certain gambling businesses violating State or territorial law and kickbacks related to certain employee benefit plans.

Chapter 96. Racketeer influenced and corrupt organizations (§§ 1961-1968). This chapter makes criminal investing profits from a wide variety of illegal activities in any enterprise engaged in interstate or foreign commerce.

Chapter 97. Railroads (§§ 1991-1992). This chapter makes criminal murder or robbery on a railroad train, or entering a train with the intent of committing murder or robbery, if the train is in a Territory of the United States or the District of Columbia. Also made criminal is damaging or destroying trains, depots, and other railroad facilities employed in interstate or foreign commerce.

Chapter 99. Rape (§§ 2031-2032). This chapter makes rape a federal crime if committed on federal lands, on the high seas, and in certain other areas.

Chapter 101. Records and reports (§§ 2071-2076). This chapter makes criminal hiding, mutilating, destroying, or removing federal public records or making false entries in those records.

Chapter 102. Riots (§§ 2101-2102). This chapter makes criminal travel in interstate or foreign commerce or use of facilities of interstate or foreign commerce, including the mails, to promote, organize, or carry out a violent public disturbance.

Chapter 103. Robbery and burglary (§§ 2111-2117). This chapter makes criminal robbery committed on federal lands, the high seas, and in certain other areas. Also made criminal are robbery of property belonging to the United States; robbery or burglary of a Federal Reserve bank, a national bank, or a bank whose deposits are insured by the Federal Deposit Insurance Corporation; assaulting or wounding a person having custody of the mail or property or money belonging to the United States; and burglary of Postal Service property or of transportation facilities containing interstate or foreign freight shipments.

Chapter 105. Sabotage (§§ 2151-2157). This chapter makes criminal a variety of activities interfering with national defense. Among the activities proscribed are trespass on or causing damage to military installations or property; destroying war materials, military installations, or defense plants, utilities, or transportation or communication facilities; and producing defective materials with the intention of harming the national defense.

Chapter 107. Seamen and stowaways (§§ 2191-2199). This chapter makes criminal cruelty to seamen; revolt or mutiny by seamen; inciting seamen to revolt or mutiny; shanghaiing sailors; abandoning seamen in foreign ports; dangerous and willful or drunken neglect of duty by seamen; misuse of federal certificates, licenses, and documents issued to vessels, officers, or seamen; seduction of female passengers by officer or crew; and stowing away on a vessel or aircraft.

Chapter 109. Searches and seizures (§§ 2231-2236). This chapter makes criminal interference with lawful searches and seizures; destruction or removal of articles to prevent their seizure; and rescue of seized property. Also made criminal are unlawful searches without warrants; malicious procurement of search warrants without probable cause; and exceeding authority in execution of a search warrant.

Chapter 110. Sexual exploitation of children (§§ 2151-2153). This chapter makes criminal using a child in sexually explicit conduct for production of a film,

book, magazine, or other visual or print media depicting that conduct, with the knowledge that the media will be circulated in interstate or foreign commerce or in the mails. Shipment or receipt of such media in interstate or foreign commerce or in the mails is also made criminal.

Chapter 111. Shipping (§§ 2271-2279). This chapter makes criminal a variety of offenses related to shipping. Among the activities made criminal are destruction of a vessel by its owner to collect the proceeds of insurance on the vessel; destruction or casting away of a vessel of the United States by a member of its crew; use of a vessel by its master to violate the laws of the United States or to defraud the United States; breaking or entering a vessel with intent to commit a felony; unauthorized possession of explosives or weapons aboard a vessel of the United States; and the unauthorized boarding of a vessel just prior to its arrival at its destination.

Chapter 113. Stolen property (§§ 2311-2318). This chapter makes criminal the movement in interstate or foreign commerce of various specified types of stolen property, including motor vehicles, aircraft, cattle, and goods or money of value in excess of $5000. Also made criminal is the similar movement in interstate or foreign commerce of counterfeited securities or tax stamps, counterfeiting tools, and phonograph records or films bearing forged or counterfeit labels.

Chapter 114. Trafficking in contraband cigarettes (§§ 2341-2346). This chapter makes unlawful transporting, receiving, selling, purchasing, or possessing cigarettes in quantities of 300 or more cartons (60,000 cigarettes) that do not bear evidence of payment of applicable State taxes. Also made criminal is making false statements or otherwise failing to keep proper records regarding the shipment of cigarettes in quantities of 300 or more cartons.

Chapter 115. Treason, sedition, and subversive activities (§§ 2381-2391). This chapter makes criminal giving aid or comfort to enemies of the United States by persons owing allegiance to the United States;* engaging

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*Citizens of the Northern Mariana Islands will owe allegiance to the United States on termination of the trusteeship when they become citizens or nationals of the United States.

in insurrection or rebellion against the authority of the United States; failure of subversive organizations to register with the Attorney General; and encouraging insubordination, mutiny, or disloyalty by members of the Armed Forces.

Chapter 117. White slave traffic (§§ 2421-2424). This chapter makes criminal the transportation of women in interstate or foreign commerce for prostitution or other immoral purposes.

Chapter 119. Wire interception and interception of oral communications (§§ 2510-2520). This chapter makes criminal unauthorized wiretapping or interception of oral communications. Also made criminal are the manufacture and the shipment or advertisement in interstate or foreign commerce or in the mails of devices for the surreptitious interception of wire or oral communications.

Present applicability.

As noted above, the protection of persons and property and the preservation of the peace within a State or territory are, generally speaking, functions of the State or territorial government. Federal criminal laws enacted by Congress for these purposes operate only in the so-called "special maritime and territorial jurisdiction of the United States," where State or territorial governments lack jurisdiction. See Caha v. United States, 152 U.S. 211, 215 (1894).

Section 7 of title 18, defining the "special maritime and territorial jurisdiction of the United States" has been interpreted to include within that jurisdiction only areas within which the United States exercises exclusive jurisdiction, for example, a military installation, and areas outside of the United States where no recognized system of law and order obtains. Ex parte Mulvaney, 82 F. Supp. 743, 744 (D. Hawaii 1949). Thus, the then Territory of Hawaii was held not to be within the special maritime and territorial jurisdiction of the United States. Id. See also Watts v. United States, 1 Wash. T. 288, 296-301 (1870), holding the then Territory of Washington the equivalent of a State so that crimes committed there were not committed in an area within the sole and exclusive jurisdiction of the United States. By the same reasoning, the Northern Mariana Islands is not within the special maritime and

territorial jurisdiction of the United States.* Consequently, crimes such as homicide, arson, rape, and robbery, if they involve no federal interest, are punishable under the laws of the Northern Mariana Islands, not under federal laws.

Almost all other federal criminal statutes protect specific federal interests and are of universal application throughout the territorial limits of the United States. Id. The territorial limits of the United States are defined to include all places subject to the jurisdiction of the United States. 18 U.S.C. § 5. Guam is subject to the jurisdiction of the United States, and thus to federal criminal laws. See United States v. Santos, 623 F.2d 75, 77 (9th Cir. 1980); United States v. Taitano, 442 F.2d 467, 469 (9th Cir. 1971), certiorari denied, 404 U.S. 852 (1971). The federal criminal laws are therefore applicable to Guam and the several States and, by operation of section 502(a)(2) of the Covenant, are consequently now applicable to the Northern Mariana Islands.**

Some federal criminal statutes, by their own terms, are not applicable to all areas subject to the jurisdiction of the United States. Specific applicability provisions in a particular statute supercede the general rule that federal criminal statutes apply wherever the United States has jurisdiction. Thus, for example, section 372 of title 18 makes criminal a conspiracy to impede or injure a federal officer by two or more persons "in any State, Territory, Possession, or District." Guam is a "Territory" or "Possession." The section is thus applicable to Guam and the several States and, by operation of section 502(a)(2) of the Covenant, to the Northern Mariana Islands. Also applicable to the Northern Mariana Islands by way of their application to Guam (by name or as a

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*The cases determining the extent of the special maritime and territorial jurisdiction of the United States did not address whether the Northern Mariana Islands is excluded from that jurisdiction. Accordingly, legislative language is proposed in this report to make clear that the Northern Mariana Islands is not within that jurisdiction. See the recommendation, Technical amendments to title 18 of the United States Code, Crimes and Criminal Prodecure, in the Recommendations section of this report. See also Wynne v. United States, 217 U.S. 234 (1910), holding, under a predecessor statute, that a murder committed on a ship in Honolulu harbor, within the jurisdiction of the Territory of Hawaii, was not within the jurisdiction of a "State" and, thus, could be prosecuted by the United States.

**Even if the Covenant had never been adopted, however, the Northern Mariana Islands--by virtue of Article 3 of the Trusteeship Agreement--would be under the jurisdiction and, therefore, within the territorial limits of the United States for purposes of the federal criminal laws.

territory or possession) and section 502(a)(2) of the Covenant are chapter 41, making criminal extortionate credit transactions (18 U.S.C. § 891(8)); chapter 44, making criminal the unlicensed importation, manufacture, or sale of firearms (id. § 921(a)(2)); and chapter 59, making criminal transportation of intoxicating liquors into "any State, Territory, District, or Possession" where prohibition is in effect (id. § 1262).

Even though federal criminal laws are generally applicable to the Northern Mariana Islands, the specific language of particular criminal statutes may make their actual application in the Northern Mariana Islands very unlikely or impossible. For example, chapter 53 of title 18, making criminal various offenses committed on Indian reservations or in certain other Indian areas is applicable to any Indian reservations in the Northern Mariana Islands but, of course, there are none. Likewise, chapter 87, making criminal certain offenses at federal prisons, and chapter 97, making criminal certain conduct affecting trains and railroad facilities, have no practical application in the Northern Mariana Islands which has neither federal prisons nor railroads.

Many federal criminal statutes become applicable only if a particular activity affects interstate or foreign commerce. "Interstate commerce" is defined to include "commerce between one State, Territory, Possession, or the District of Columbia and another State, Territory, Possession, or the District of Columbia." 18 U.S.C. § 10. Guam is a "Territory" or "Possession" of the United States so interstate commerce includes commerce among the several States and Guam. By operation of section 502(a)(2) of the Covenant, interstate commerce also includes commerce among the several States, Guam, and the Northern Mariana Islands. Thus, statutes making a particular activity criminal if it affects interstate or foreign commerce are applicable to activities affecting commerce crossing the borders of the Northern Mariana Islands.*

Certain sections of chapter 27 of title 18, making criminal smuggling and other customs law violations, are inapplicable, by their own terms, to Guam and other named areas outside the customs territory of the United States. See 18 U.S.C. §§ 542 (entry of goods by means of false statements), 544 (relanding of goods), and 546 (smuggling). The Northern Mariana Islands is also outside the customs territory of the United States. Covenant § 603(a). But,

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*"Interstate or foreign commerce" is occasionally defined in slightly varying terms for the purpose of particular chapters in title 18 of the United States Code. See, for example, 18 U.S.C. § 841(b). In all such cases, commerce across the borders of the Northern Mariana Islands is included within that definition.

because the Northern Mariana Islands is not specifically named, these sections and the remainder of chapter 27 are applicable to the Northern Mariana Islands under the general proposition that federal criminal statutes are applicable in all areas subject to the jurisdiction of the United States.*

Chapter 114, making criminal trafficking in contraband cigarettes, is not applicable in the Northern Mariana Islands. "Contraband cigarettes" are defined, in part, as those which bear no evidence of payment of applicable State cigarette taxes in the State where the cigarettes are found. 18 U.S.C. § 2341(2). "State" is defined to include neither Guam nor the Northern Mariana Islands. Id. § 2341(4). Chapter 114 is the only chapter in part I of title 18 that, by its own terms, is not applicable in the Northern Mariana Islands.

Discussion.

Most federal criminal laws should continue to apply in the Northern Mariana Islands. Federal criminal laws generally protect particular interests, personnel, facilities, or functions of the Federal Government. Those interests, personnel, facilities, and functions are no less deserving of protection in the Northern Mariana Islands than elsewhere.

The application of several federal criminal laws to the Northern Mariana Islands should be changed. See, in the Recommendations section of this report, the recommendations, Importation of fruit bats, Customs crimes, Exportation of arms, liquors, and narcotics to Pacific Islands, Lottery prohibitions, and Technical amendments to title 18 of the United States Code, Crimes and Criminal Procedure.

Part II. Criminal Procedure.

and

Part III. Prisons and Prisoners.

and

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*A statute is applicable to the Northern Mariana Islands if it is applicable to the several States and Guam. Covenant § 502(a)(2). The converse, however, is not true. A statute applicable to all areas subject to the jurisdiction of the United States is not inapplicable to the Northern Mariana Islands simply because it is inapplicable to Guam.

Part IV. Correction of Youthful Offenders.

and

Part V. Immunity of Witnesses.

The Commission did not examine these parts of title 18 in detail. No problems in the application of these parts to the Northern Mariana Islands were brought to the Commission's attention.

TITLE 19. CUSTOMS DUTIES.

The Commission's staff prepared two draft recommendations related to title 19 for the Commission's consideration. The time and resources available to the Commission were not adequate to allow a sufficient opportunity for public comment on these proposals. Accordingly, the Commission took no action with respect to either proposal. The two recommendations, Title 19 of the United States Code, Customs Duties and Import quotas, are reproduced in the Documentary Supplement to this report.

TITLE 20. EDUCATION.

The Commission's recommendation, The Higher Education Act, in the Recommendations section of this report, discusses chapter 28 of title 20.

The Commission's staff examined the other chapters in title 20, but did not compile and edit its research for inclusion in this report. No significant problems in the application of these chapters to the Northern Mariana Islands were uncovered by the staff's research or otherwise brought to the Commission's attention.

TITLE 21. FOOD AND DRUGS.

The Commission's staff examined title 21 in its entirety, but did not compile and edit its research for inclusion in this report. No significant problems in the application of title 21 to the Northern Mariana Islands were uncovered by the staff's research or otherwise brought to the Commission's attention.

TITLE 22. FOREIGN RELATIONS AND INTERCOURSE.

The Commission's recommendation, Creation of a special United States passport for citizens of the Northern Mariana Islands, in the Recommendations section of this report, discusses chapter 4 of title 22. The Commission's staff examined the other chapters of title 22,

but did not compile and edit its research for inclusion in this report. No significant problems in the application of these chapters to the Northern Mariana Islands were uncovered by the staff's research or otherwise brought to the Commission's attention.

TITLE 23. HIGHWAYS.

and

TITLE 24. HOSPITALS AND ASYLUMS.

The Commission did not examine these titles of the United States Code in detail. No problems in the application of these titles to the Northern Mariana Islands were brought to the Commission's attention.

TITLE 25. INDIANS.

The statutes.

Title 25 of the United States Code contains federal laws of a general and permanent nature relating to American Indians.

Present applicability.

Title 25 in general applies to organized Indian tribes and their members and to Indian reservations and other Indian lands. Neither organized Indian tribes nor Indian lands are found in the Northern Mariana Islands. Consequently, title 25 may be regarded as inapplicable to the Northern Mariana Islands by reason of its subject matter.

Discussion.

The Commission makes no recommendations with respect to title 25. The Commission notes, however, that section 399 of title 25 authorizes the Secretary of the Interior to lease certain mineral lands on Indian reservations to citizens of the United States. Citizens of the Northern Mariana Islands will not become citizens of the United States until full implementation of the Covenant on termination of the trusteeship. Covenant §§ 301, 1003(c). Until that time they are unable to lease mineral lands on Indian reservations pursuant to section 399. No recommendations were made with regard to this citizenship requirement in the Commission's January 1982 interim report to the United States Congress.

TITLE 26. INTERNAL REVENUE CODE

Subsidiary Table of Contents

* * *

Summary

Income taxes. The federal income tax laws became applicable to the Northern Mariana Islands on January 1, 1979, as a local territorial, or "mirror," tax, with proceeds of the tax going into the treasury of the Northern Mariana Islands. The mirror tax is administered and enforced by the government of the Northern Mariana Islands, but that government may request the Federal Government to administer and enforce the tax at no cost to the Northern Mariana Islands.

Residents of the Northern Mariana Islands, including corporations organized under the laws of the Northern Mariana Islands, were temporarily exempted, until January 1, 1985, from payment of the local territorial tax on income derived from sources within the Northern Mariana Islands.

The application of federal income tax laws as mirror taxes in the territories has been criticized as creating a system too complex

for both the taxpayer and tax collection authorities and too conducive to tax evasion and avoidance. Prevailing sentiment in the Northern Mariana Islands opposes imposition of the mirror tax and favors development and implementation of a locally-developed tax system. The Covenant must be amended to allow the Northern Mariana Islands to replace the mirror tax with its own tax system. (The authority given the Northern Mariana Islands under the Covenant to rebate mirror taxes collected, however, has been argued to be sufficiently broad to allow the Northern Mariana Islands to replace the mirror tax with its own tax system without amending the Covenant.)

Allowing the Northern Mariana Islands to replace the mirror tax with its own tax system may give the Northern Mariana Islands an unfair advantage over Guam, unless Guam is given similar authority.

Federal grants to the Northern Mariana Islands may be fewer and smaller if federal income tax laws are not imposed as a mirror tax in the Northern Mariana Islands substantially as those laws are imposed in the United States. This likelihood is based on the sentiment that taxes collected in the United States proper should not be expended for the benefit of the Northern Mariana Islands if the people of the Northern Mariana Islands are unwilling to contribute to their own welfare by taxing themselves at comparable levels.

The government of the Northern Mariana Islands informed congressional leaders in December 1983 of its intention to develop and submit to the United States Congress legislation to allow the Northern Mariana Islands to repeal the mirror tax and otherwise revise the tax relationship between the Northern Mariana Islands and the United States.

Estate and gift taxes. Because of exclusions and deductions allowed in computing estate and gift taxes, those taxes affect only relatively wealthy persons. Persons residing in the Northern Mariana Islands who become United States citizens solely by operation of article III of the Covenant will be subject to neither estate nor gift taxes. All other United States citizens residing in the Northern Mariana Islands are subject to those taxes.

Employment taxes. Employers and employees in the Northern Mariana Islands are made subject to taxes imposed by the Federal Insurance Contributions Act to support the federal social security system at the time the social security systems of the Northern Mariana Islands and the United States are merged (either at the end of the trusteeship or an earlier date set by agreement between the Northern Mariana Islands and the United States). The self-employment tax, imposed on self-employed individuals for the same purpose, also becomes effective in the Northern Mariana Islands at that time.

The Federal Unemployment Tax Act, which imposes an employment tax to support the federal-State unemployment insurance program, is not applicable in the Northern Mariana Islands.

Excise taxes. Most federal excise taxes are not applicable within the Northern Mariana Islands. The only excise taxes that do apply in the Northern Mariana Islands are the environmental taxes on crude oil and petroleum products, on certain chemicals, and on hazardous wastes.

Introduction

Taxes command attention, particularly from those called upon to pay them. From the negotiation of the Covenant to the present, the extent to which the Internal Revenue Code should apply to the Northern Mariana Islands has commanded a great deal of attention. While the wisdom of applying other federal laws to the Northern Mariana Islands has frequently been the subject of debate, with no federal law has the debate been so heated as with the Internal Revenue Code.

The most appropriate system of taxation for the Northern Mariana Islands is the subject of ongoing negotiations, involving the government of the Northern Mariana Islands, the Department of the Interior and Department of the Treasury in the United States Government, and concerned committees of the United States Congress. Section 3(c) of Public law 98-213, 97 Stat. 1459, which was signed into law in December 1983, provides:

> The Secretary of the Interior and the Governor of the Commonwealth of the Northern Mariana Islands shall each submit a report to the Committee on Interior and Insular Affairs of the House of Representatives and the Committee on Energy and Natural Resources of the Senate on any efforts to develop any needed modification of the income tax rates required by sections 601 and 602 of the Covenant . . . to enforce such sections. The initial report shall be transmitted not later than January 1, 1984, with subsequent reports to be transmitted every three months thereafter until January 1, 1985. The reports shall set forth the precise objectives of both the Commonwealth government and the administration, any areas of difference, the modifications under consideration, and what progress has been made to resolve any differences and implement the provisions of sections 601 and 602.

The first reports submitted pursuant to this requirement contemplate modification of Covenant provisions relating to the federal income tax. See letter from Richard T. Montoya, Deputy Assistant Secretary of the Interior for Territorial and International Affairs, to Senator James A. McClure, Chairman, Committee on Energy and Natural Resources

(December 27, 1983);* letter from Northern Mariana Islands Governor Pedro P. Tenorio to Senator McClure (December 30, 1983).

The following treatment begins with an overview of the federal tax system, and then proceeds to discuss each of the major federal taxes imposed by the Internal Revenue Code.**

Each type of tax is described, its present applicability to the Northern Mariana Islands is discussed, and issues pertaining to its application are summarized. The treatments of particular taxes are presented according to their arrangement in the various subtitles of the Internal Revenue Code, title 26 of the United States Code.

An Overview of the Federal Tax System

The goals of taxation.

Nations, and their local subdivisions, tax their citizens and residents to raise money for common purposes. Taxes, however, are not only used to raise revenue to support the functions of government. They are also used to manipulate the national economy, to encourage spending for particular purposes (for example, housing or pollution control devices) and to discourage it for others (for example, tobacco products). More generally, a system of taxation may be used to encourage full employment or international trade, to speed economic growth, or to stabilize the national currency.

In addition to the revenue-raising and economic goals of taxation, tax systems can be used to lessen the gap between the richest and the poorest members of a society, if that gap is thought too large. Wealthier individuals in the society can be taxed at a higher rate, and government programs can benefit primarily those with less wealth at their disposal.

In democratic societies, the common purposes for which citizens may be taxed, the method of taxation, and the tax contribution expected from each citizen and resident are decided by elected legislative bodies.

In the federal system of the United States, the functions of government are divided between the national government and State and local governments. The legislatures of each of those governments decide for what purposes within their constitutional authority public funds shall be raised and how those funds shall be raised.

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*The Deputy Assistant Secretary took no position on whether modification of the Covenant provisions would be supported by the executive branch of the Federal Government.

**Customs duties, imposed by title 19 of the United States Code, are not discussed here.

The Congress of the United States has decided to raise funds from the American public for a wide variety of purposes. In fiscal year 1983, the most important purposes for which taxes were collected, judged by the expenditures for each, were as follows:

	Expenditures in billions of dollars	Percent of total expenditures*
National defense, and veterans benefits and services	235.3	28.9
Social security	170.7	21.0
Other income security programs, including unemployment compensation, federal employee retirement, and food stamps	106.2	13.0
Interest on the national debt	89.8	11.0
Health, including Medicare	81.3	10.0
Education, training, employment, and social services	26.6	3.3
Agriculture	22.2	2.7
Transportation	21.4	2.6
Natural resources and environment	12.7	1.6
International affairs	9.0	1.1
All other federal functions	39.4	4.8

U. S. Office of Management & Budget, Budget of the U.S. Government: Fiscal Year 1985, at 9-6 to 9-7 (1984).

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*No allowance is made here for undistributed offsetting federal receipts, which reduce total federal expenditures by $18.6 billion. Consequently, the percentages given here in total exceed 100 percent.

The means of taxation.

Taxes are judged by a variety of interrelated criteria. The first test is the ability of the tax to raise revenue for the government. More revenue is raised if the costs to the government of administering and enforcing the tax are low. Administration and enforcement costs will be lower if taxpayers voluntarily pay the tax. Voluntary payment in turn is more likely if taxpayers view the tax as fair. A tax that is certain in its application and not subject to variation at the discretion of administrative officials is more likely to be perceived as fair. Taxpayers are also more likely to pay the tax if it can be done with little pain to themselves.

Unfortunately, a tax that scores highly against one criteria is likely to score poorly against others. Most obviously, taxes that cause little pain to the taxpayer are not likely to raise large amounts of revenue. Taxes that are finely discriminating in order to ensure that differently-situated groups of taxpayers are treated equitably are apt to be more complex for the government to administer and more difficult for the taxpayer to understand.

Among the better known means of taxation are income taxes, property taxes, sales and excise taxes, death and gift taxes, and customs duties. Income taxation is widely accepted as the fairest kind of tax "based on the premise that an individual's income is the best single index of his ability to contribute to the support of government." 9 Encyclopaedia Britannica Macropaedia, Income Tax, Personal 272 (15th ed. 1980).

The most important federal taxes are the personal income tax, social insurance taxes and contributions, the corporation income tax, excise taxes, customs duties, and estate and gift taxes. In fiscal year 1983 the contribution of each to total federal budget receipts was as follows:

	Receipts in billions of dollars	Percent of total receipts*
Personal income taxes	288.9	48.1
Social insurance taxes and contributions	209.0	34.8
Corporation income taxes	37.0	6.1
Excise taxes	35.3	5.9
Customs duties	8.7	1.4
Estate and gift taxes	6.1	1.0

U.S. Office of Management & Budget, Budget of the U.S. Government: Fiscal Year 1985, at 9-19 to 9-21 (1984).

Taxation in the United States stands up well when compared to tax systems in other countries. "[I]t is clear that the total [federal, State, and local] tax burden is more moderate in the United States than in most other developed countries."** G. Break & J. Pechman, Federal Tax Reform: The Impossible Dream? 3 (1975). And, "[c]ompared to those of most other countries, the federal part of the U.S. tax system is probably one of the best. It relies heavily on progressive taxes and is administered with competence and evenhandedness." Id. at 10.

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*Miscellaneous receipts of $15.6 billion, not itemized here, are included in total receipts of $600.6 billion.

**Less-developed countries tend to tax at lower rates. "One might suppose that a country with high per capita incomes would have less need for high government expenditures, especially in the form of social welfare, but the fact is that the demand for government services tends to increase with the level of national income." 17 Encyclopaedia Britannica Macropaedia, Taxation 1076, 1081 (15th ed. 1980).

If the federal tax system is compared not to the systems of other countries but to one or another proposed systems, compliments quickly turn to condemnation:

> Despite recent progress in lowering rates, the [federal] tax system remains a disgrace. It is in dire need of simplification and reform. The tax system is inordinately big, filling volumes of codes, complicated by hundreds of credits, exemptions and special provisions. Many taxpayers need expensive professional help to fill out their returns. Each act of the Congress complicates the system further. Widespread evasion is apparent on interest, dividend and other forms of household or professional income. Tax shelters are commonplace. Estimates of the size of the underground economy range from tens of billions of dollars to several hundred billion. In short, we have a system that fosters contempt for the law, and simultaneously discourages productive economic activity.

Hall & Rabushka, A Proposal to Simplify Our Tax System, Wall Street Journal, December 10, 1981, at 30. And:

> Taxes are now so complicated and income-sheltering so widespread that its incidental, almost casual, promotion seems routine and respectable. There is a subtle corruption in public morals; tax avoidance easily blurs into tax evasion . . .
>
> . . . The system has created so many vested interests that almost any effort to remold it would encounter immense political opposition. Everyone favors simple taxes with low rates until the implications of such a system become clear.

Samuelson, The Tax Trap, 14 National Journal 641 (April 10, 1982).

Political and philosophical perspectives also influence evaluations of the American system of taxation. Some persons prefer more governmental functions to be carried out at State and local levels while others prefer more federal participation in these functions. Some prefer that government assume fewer responsibilities overall, while others favor an expansion of governmental activity. Likewise, differences of opinion exist as to the extent to which the Federal Government, through the tax system, should attempt to steer the economy or reallocate resources among the various sectors of the American economy.

The federal tax system is administered by the Internal Revenue Service, part of the Department of the Treasury.

Subtitle A. The Income Tax.

The statutes.

Subtitle A of the Internal Revenue Code imposes taxes on the incomes of individuals and corporations.*

> . . . The significance of the federal income tax in foreign and domestic affairs can hardly be overstressed. This tax provided the monetary means by which the United States emerged as a dominant world power early in the twentieth century; it promises to provide the means by which the nation will continue to exert international leadership while meeting its overseas commitments.
>
> At the domestic level the federal income tax permits the Federal Government to exercise substantial control over the direction taken by the nation's economic and social institutions.

J. Chommie, Federal Income Taxation 1 (2d ed. 1973).

Income, for purposes of the federal income tax, is defined to include most gains received by a taxpayer, including wages, salaries, commissions, interest, rent, business income, dividends, prizes, and awards. Certain gains to a taxpayer, however, are specifically excluded from the Code's definition of income. Among the gains not included in income are life and health insurance benefits; property acquired by gift or inheritance; interest from tax-exempt bonds; income of governmental bodies; scholarships; social security benefits; and some fringe benefits.

The personal income tax. After an individual taxpayer's total income, or "gross income," is calculated, the taxpayer determines the adjustments for which he or she is eligible. Adjustments reduce "gross income" to "adjusted gross income" by subtracting trade and business expenses, sixty percent of net gains realized from the sale of property owned for more than six months ("long-term capital gains"), moving expenses, and certain other receipts or expenses.

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*A separate tax, included in subtitle A, on income from self-employment helps fund the federal social security system. 26 U.S.C. §§ 1401 et seq. This tax is discussed together with the Federal Insurance Contributions Act under Subtitle C. Employment Taxes, below.

The resulting "adjusted gross income" is then further reduced to "taxable income" by deductions. Each individual taxpayer is allowed to deduct from adjusted gross income a personal exemption of $1000.* Additional exemptions of $1000 are allowed for persons dependent for support on the taxpayer who are part of the taxpayer's family or household. Further exemptions are allowed if the taxpayer or the taxpayer's spouse is over 65 years of age or blind.

In addition to personal exemptions, individual taxpayers are permitted a wide variety of other deductions from adjusted gross income. Until 1977, an individual could deduct from adjusted gross income either the total of all itemized deductions or a "standard deduction," whichever was greater. The standard deduction has now been incorporated into the tax tables as the "zero bracket allowance." Adjusted gross income may still be reduced, however, by subtracting the amount by which total itemized deductions exceed the zero bracket allowance.

The most important deductions for the individual are for taxes paid to local governments, for interest payments, for medical expenses in excess of five percent of adjusted gross income, for contributions to charity, and for casualty losses, such as losses from fire or theft. O. Eckstein, Public Finance 57 (4th ed. 1979).

After the taxpayer has calculated his or her taxable income, the amount of tax owed to the Federal Government is determined by applying the tax rate for that level of taxable income. Against the amount of tax determined to be owed to the government, the taxpayer may apply certain "credits" to reduce the total tax owed. Tax credits are allowed for a variety of expenditures by a taxpayer. Among the expenditures that may give rise to a tax credit are taxes paid to foreign countries, political campaign contributions, investments in productive property, employment-related child care expenses, and residential energy conservation expenditures. In addition, the "earned income credit" of up to $500 may be claimed by certain low income workers who have dependent children in their household. Unlike other tax credits, if the earned income credit exceeds the taxpayer's total tax liability, the Federal Government will pay the difference to the taxpayer.

United States citizens and aliens residing in the United States are subject to taxes on their world-wide income (but, as noted above, receive a credit against those taxes for taxes paid to foreign countries). In addition, the United States imposes taxes on the

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*For 1984 and succeeding years, the personal exemption will be adjusted to reflect changes in the cost of living.

income of foreign persons if that income is generated in the United States.

In general, each individual with a gross annual income of $3300 or more and each married couple choosing to be taxed as a single unit ("filing a joint return") and having a gross annual income of $5500 is required to file an income tax return. The return identifies the taxpayer, lists exemptions, deductions, credits, and the amount of tax due.

Persons expecting to earn more than $500 in a year from wages and taxpayers with gross income in excess of specified amounts ($20,000 in the case of a single taxpayer) are required to estimate their income tax liability and make quarterly tax payments to the government based on that estimate. This procedure is not required, however, if the taxpayer will owe less than a specified amount ($400 in 1984) beyond what is withheld from the taxpayer's wages. For most wage earners in the United States, federal income taxes are withheld from the wage earner's paycheck by his or her employer and paid by the employer directly to the Federal Government. In general, then, the wage-earning taxpayer will have income tax withheld from wages, while the self-employed taxpayer will pay estimated tax to the government in quarterly installments.

Below are tables giving an idea of the level of federal income taxes at various income levels. The taxes are calculated at 1983 rates. In each instance, the taxpayers are assumed to have no itemized deductions in excess of the zero bracket allowance and no adjustments, credits (other than the earned income credit, if applicable), or exemptions other than personal exemptions for themselves and their dependents. Married couples are assumed to be filing a joint return.

Wage-earner, single, no dependents (one personal exemption):

Gross income		Income tax	
Annual	Biweekly	Annual	Biweekly
$ 6,000	$ 230.77	$ 345	$ 13.27
9,000	346.15	795	30.58
12,000	461.54	1,300	50.00
15,000	576.92	1,892	72.77
18,000	692.31	2,583	99.35
21,000	807.69	3,376	129.85
24,000	923.08	4,216	162.15
30,000	1,153.85	6,126	235.62
36,000	1,384.62	8,323	320.12

Wage earner and dependent spouse, no other dependents (two personal exemptions):

Gross income		Income tax	
Annual	Biweekly	Annual	Biweekly
$ 6,000	$ 230.77	$ 69	$ 2.65
9,000	346.15	429	16.50
12,000	461.54	868	33.38
15,000	576.92	1,340	51.54
18,000	692.31	1,851	71.19
21,000	807.69	2,421	93.12
24,000	923.08	3,064	117.85
30,000	1,153.85	4,547	174.88
36,000	1,384.62	6,272	241.23

Wage earner, dependent spouse, and two dependent children (four personal exemptions):

Gross income		Income tax	
Annual	Biweekly	Annual	Biweekly
$ 6,000	$ 230.77	-0-*	-0-
9,000	346.15	$ 179**	$ 6.88
12,000	461.54	568	21.85
15,000	576.92	1,018	39.15
18,000	692.31	1,510	58.08
21,000	807.69	2,041	78.50
24,000	923.08	2,611	100.42
30,000	1,153.85	4,027	154.88
36,000	1,384.62	5,672	218.15

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*This family is entitled to an earned income credit of $497, to be paid by the government to the family.

**This family is entitled to an earned income credit of $122, so that its annual income tax obligation is $57 ($179 minus $122), or a biweekly obligation of $2.19.

Wage earner, dependent spouse, and four dependent children (six personal exemptions):

Gross income		Income tax	
Annual	Biweekly	Annual	Biweekly
$ 6,000	$ 230.77	-0-*	-0-
9,000	346.15	-0-**	-0-
12,000	461.54	$ 299	$ 11.50
15,000	576.92	718	27.61
18,000	692.31	1,170	45.00
21,000	807.69	1,680	64.62
24,000	923.08	2,231	85.81
30,000	1,153.85	3,524	135.54
36,000	1,384.62	5,072	195.08

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*This family is entitled to an earned income credit of $497, to be paid by the government to the family.

**This family is entitled to an earned income credit of $122, to be paid by the government to the family.

* * *

The corporate income tax. A corporation's income tax liability in general is calculated in much the same way as the personal income tax. Despite the similarity in outline and many provisions in common, the two taxes vary widely in detail. Corporations have no deductions for personal exemptions or for medical expenses, for example. They are, however, entitled to deduct virtually all costs of doing business.

Taxable corporate income in excess of $100,000 is taxed at the rate of 46 percent. (Taxable income of less than $100,000 is taxed in increments: 16 percent of the first $25,000; 19 percent of the second $25,000; 30 percent of the third $25,000; and 40 percent of the fourth $25,000.)

Non-profit charitable, educational, benevolent, and religious corporations, labor unions, and trade associations are exempted from the corporate income tax, except to the extent they engage in commerce not connected with their primary function. Insurance companies and certain financial institutions are treated differently from other corporations.

Corporations are subject to U.S. tax on foreign as well as domestic income. Income earned by foreign

> branches (and certain corporations located in tax havens) is included in the corporation's tax return in the year it is earned. If the corporation operates through a foreign subsidiary, foreign earnings are subject to tax when they are distributed to the U.S. parent corporation as dividends. However, credit against the domestic tax is allowed for foreign income and withholding taxes paid on earnings and dividends received from abroad.

J. Pechman, Federal Tax Policy 127 (3d ed. 1977). Foreign corporations conducting business within the United States pay the corporate income tax on that part of their income derived from their United States business operations.

Even though a corporation is taxed on its income, dividends paid by the corporation to its shareholders are income to those shareholders, on which they must pay personal income tax.

Present applicability.

The federal income tax as a local territorial tax. The present applicability of the Internal Revenue Code to the Northern Mariana Islands is addressed by the Covenant, and has been the subject of subsequent acts of Congress. Section 601 of the Covenant provides:

> (a) The income tax laws in force in the United States will come into force in the Northern Mariana Islands as a local territorial income tax on the first day of January following the effective date of this Section, in the same manner as those laws are in force in Guam.
>
> (b) An individual who is a citizen or a resident of the United States, of Guam or of the Northern Mariana Islands (including a national of the United States who is not a citizen), will file only one income tax return with respect to his income, in a manner similar to the provisions of Section 935 of Title 26, United States Code.
>
> (c) References in the Internal Revenue Code to Guam will be deemed also to refer to the Northern Mariana Islands, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof or of this Covenant.

Section 602 provides further:

> The Government of the Northern Mariana Islands may by local law impose such taxes, in addition to those imposed under Section 601, as it deems appropriate and provide for the rebate of any taxes received by it, except that the power of the Government of the Northern Mariana Islands to rebate collections of the local territorial income tax received by it will be limited to taxes on income derived from sources within the Northern Mariana Islands.

Section 601(c) of the Covenant provides that, for virtually all purposes of the federal income tax laws, the Northern Mariana Islands will be treated as is Guam. It was considered desirable by the framers of the Covenant "that Guam and the Northern Marianas have coordinated tax laws since they operate in the same economic and geographic sphere." Marianas Political Status Commission, Section by Section Analysis of the Covenant 67-68 (1975).*

Section 601, standing alone, imposes a "mirror" of the federal tax as a local territorial tax of the Northern Mariana Islands. The taxpayer's obligation is to the Northern Mariana Islands, not to the United States. The words "the Northern Mariana Islands" are to be substituted for the words "the United States" wherever they appear in the federal income tax laws, just as the word "Guam" is substituted in applying the federal income tax laws as the territorial income tax of Guam. See 48 U.S.C. § 1421i(e); Revenue Ruling 80-167, 1980-1 C.B. 176, 177. The local territorial taxes collected in the Northern Mariana Islands are payable to the government of the Northern Mariana Islands. See 48 U.S.C. § 1421i(b).

Effective date. The effective date of section 601 was January 9, 1978. Covenant § 1003(b); Presidential Proclamation 4534, 42 Fed. Reg. 56593 (1977). Consequently, under subsection (a) of section 601, the federal income tax laws became applicable to the Northern Mariana Islands as a local territorial income tax on January 1, 1979.

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*The Analysis is reprinted in Hearings on the Covenant to Establish the Commonwealth of the Northern Mariana Islands before the Subcommittee on Territorial and Insular Affairs of the House Committee on Interior and Insular Affairs, 94th Cong., 1st Sess. 626 (1975) and in Hearings on the Northern Mariana Islands before the Senate Committee on Interior and Insular Affairs, 94th Cong., 1st Sess. 356 (1975).

Residents of the Northern Mariana Islands, including corporations and other firms organized under the laws of the Northern Mariana Islands, were temporarily exempted from payment of the local territorial tax on income derived from sources within the Northern Mariana Islands. The exemption, granted by successive acts of Congress, expired on January 1, 1985. Public Law 96-205, § 205(a), 94 Stat. 84 (exemption until January 1, 1981, and, conditionally, until January 1, 1982); Public Law 96-597, § 303(a), 94 Stat. 3477 (1980) (exemption until January 1, 1983); Public Law 98-213, § 3(a), 97 Stat. 1459 (1983) (exemption until January 1, 1985).*

Residents of the the Northern Mariana Islands have been subject to the federal income tax as a local territorial tax since January 1, 1979, on income derived from sources outside the Northern Mariana Islands.

The individual taxpayer. Individuals who are citizens or residents of the Northern Mariana Islands, Guam, or the United States (excluding the Northern Mariana Islands and Guam) are required to file only one tax return. Covenant § 601(b). The jurisdiction with which the return is filed is determined by citizenship or residence at the close of the tax year. 26 U.S.C. § 935(b)(2). If the taxpayer is a resident of the Northern Mariana Islands at that time, the return is filed with the Northern Mariana Islands; if a resident of Guam, with Guam; and if a resident of the United States, with the United States. Id. § 935(b)(1). If the taxpayer resides in none of the three jurisdictions, and is a citizen of the United States, the return is filed with the United States. Id. If the nonresident taxpayer is a citizen of the Northern Mariana Islands but not of the United States, the return is filed with the Northern Mariana Islands. Id.

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*Specifically, the exemption is available "for taxable years beginning after December 31, 1978, until, but not after January 1, 1985." Whether the exemption is available for a taxable year coinciding with the calendar year beginning January 1, 1985, is thus unclear. The ambiguity is increased by a 1980 amendment of the language. Prior to enactment of section 303(a) of Public Law 96-597, the exemption applied to "taxable years beginning . . . before January 1 . . ." rather than to "taxable years beginning . . . until, but not after January 1." Public Law 96-205, § 205(a). The legislative history of Public Law 96-597 does not explain why the language was changed in this manner.

The corporate taxpayer. Since section 601 of the Covenant operates to substitute "the Northern Mariana Islands" for "the United States" in applying the federal income tax laws as the local territorial income tax of the Northern Mariana Islands, the tax relationship between the Northern Mariana Islands and Northern Mariana Islands corporations is the same as that between the United States and United States corporations. The United States corporate income tax is applied to "every corporation." 26 U.S.C. § 11(a). Excepted, however, are foreign corporations, which are taxed only on income "effectively connected with the conduct of a trade or business within the United States." Id. §§ 11(d), 882(a)(1). In addition, foreign corporations are taxed a flat 30 percent of certain income received from sources within the United States that is not connected with the conduct of a trade or business in the United States. Id. § 881.* A "foreign corporation" is defined as a corporation not organized "under the law of the United States or of any State." Id. § 7701(4), (5).

For purposes of the local territorial tax of the Northern Mariana Islands, then, corporations organized under the laws of the Northern Mariana Islands are subject to the local territorial income tax in the same way that domestic corporations in the United States are subject to the federal corporation income tax. Foreign corporations in the Northern Mariana Islands (including corporations organized under the laws of the United States, of any State, or of Guam) are subject to the territorial corporate tax only on income effectively connected with the conduct of a trade or business within the Northern Mariana Islands and to the flat 30 percent tax on all other income received from sources in the Northern Mariana Islands.

A Northern Mariana Islands corporation is a foreign corporation for purposes of the federal corporate income tax. See Revenue Ruling 56-616, 1956-2 C.B. 589 (Guam corporation is foreign for purposes of federal income tax laws). Accordingly, a Northern Mariana Islands corporation receiving income effectively connected with the conduct of a trade or business in the United States is subject to the federal corporate income tax on that income. Qualified Guam corporations are exempted, however, from the flat 30 percent tax on other income

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*Section 881 was amended by section 127(b)(1) of the Deficit Reduction Act of 1984, Public Law 98-369, 98 Stat. 494, to exclude most interest income from the 30 percent tax.

received from sources in the United States. 26 U.S.C. § 881(b).* See also id. § 1442(c). Accordingly, qualified Northern Mariana Islands corporations are also exempted from the federal 30 percent tax on other income received from sources within the United States.**

The income of a Northern Mariana Islands corporation from sources in the United States, regardless of whether it is trade or business income, is subject to the local territorial corporate income tax of the Northern Mariana Islands. And, since that tax is on income derived from sources outside of the Northern Mariana Islands, it may not be rebated under the authority of section 602 of the Covenant. (The Northern Mariana Islands corporation owing taxes to both the Northern Mariana Islands and the United States on income derived from the United States may claim a credit against its

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*Before amendments made by section 130 of the Deficit Reduction Act of 1984, Public Law 98-369, 98 Stat. 494, any corporation "created or organized in Guam or under the law of Guam" qualified for the exemption. Section 130 requires an exempt corporation to be less than 25 percent owned by foreign persons and to derive at least 20 percent of its gross income from sources within Guam.

**But this exemption may not be used to channel "passive" income (that is, income not connected with the conduct of a trade or business) from the United States to foreign countries. See 26 C.F.R. § 4a.861-1 (1984). Guam, which sought to become a conduit (like the Netherlands Antilles) for foreign investment in the United States, filed a lawsuit challenging the legality of this regulation. See Treasury Suit Opens, Pacific Daily News (Guam), June 13, 1984, at 8; Guam v. U.S.: The Pacific-Island Territory Sues for Tax-Haven Rights, Wall Street Journal, November 30, 1983, at 1. The changes made in the 30 percent tax by the Deficit Reduction Act of 1984, exempting most interest income from that tax, has greatly reduced the incentive for establishing such conduits. See the preceding footnote. See also U.S. Tax Measure Unsettles a Caribbean Haven, Wall Street Journal, July 6, 1984, at 19; Congress Nixes Guam Tax Haven Quest, Pacific Daily News, June 17, 1984, at 3.

Citizens or residents of the Northern Mariana Islands are not "foreign persons" for purposes of determining whether a Northern Mariana Islands corporation is qualified for the exemption. The Deficit Reduction Act of 1984 specifies that citizens or residents of United States possessions are not "foreign persons." See also 26 U.S.C. § 7701(9), (30). Guam is a possession. Accordingly, by operation of section 601(c) of the Covenant, citizens or residents of the Northern Mariana Islands are not "foreign persons" in this context.

Northern Mariana Islands tax obligation for taxes paid on that income to the Federal Government, which in most instances will eliminate any liability for taxes to the Northern Mariana Islands on that income. Id. §§ 901, 906 (as made applicable to the Northern Mariana Islands by section 601 of the Covenant). The corporation may also claim a credit against its Northern Mariana Islands tax obligation for taxes paid to Guam on income derived from sources on Guam. Id.)

Corporations, unlike individuals, may have to file income tax returns with more than one jurisdiction, depending upon where they are organized and from which jurisdictions they derive income. Every corporation, foreign or domestic, subject to the federal corporate income tax is required to file a return with the United States. 26 U.S.C. § 6012(a)(2). By operation of section 1421i of title 48 of the United States Code, every corporation subject to the Guam income tax is required to file a return with Guam. And, by operation of section 601 of the Covenant, every corporation subject to the local territorial income tax of the Northern Mariana Islands must file a return with the Northern Mariana Islands. A corporation organized under the laws of any of these jurisdictions--the United States, Guam, or the Northern Mariana Islands--and receiving income from sources in the other two will have to file a return with each of the three jurisdictions. There is no rule, similar to that of section 601(b) of the Covenant for individual taxpayers, allowing the filing of a single return in one jurisdiction to satisfy the return-filing requirements of the other two.

—the "possessions corporations tax credit." As an incentive to attract employment-generating business corporations to certain possessions of the United States, section 936 allows those corporations a "possessions corporations tax credit" against their federal income tax. The effect of the credit is to allow qualified corporations to operate virtually free of federal tax on their income from those possessions. The corporations are, however, subject to any taxes imposed by the possessions and, if electing this credit, cannot claim a foreign tax credit for taxes paid to the possession. 26 U.S.C. § 901(g). In general, so long as the possession's tax on the corporation's income is less than the federal income tax, it is advantageous for the corporation to elect the possessions corporation tax credit over the foreign tax credit. To qualify for the credit, the corporation must be organized under the the laws of the United States or of one of the States; 80 percent or more of its gross income for the tax year and the two preceding years must be derived from sources within a possession; and at least a fixed percentage (55 percent in 1983, 60 percent in 1984, and 65 percent thereafter) of its gross income for the tax year and the two preceding years must be derived from the active conduct of a trade or business within a possession. Id. § 936(a)(2).

For purposes of section 936, "possession" is defined to include Puerto Rico but not to include the Virgin Islands. Id. § 936(d)(1). Guam is a possession of the United States, so qualified corporations on Guam are eligible for the possessions corporation tax credit against their federal income tax.

In determining the availability of the "possessions corporations tax credit" to corporations in the Northern Mariana Islands, it is important to note that the credit is not against the local territorial income tax, but against the federal income tax.* Section 601(c) of the Covenant provides that references to Guam in the Internal Revenue Code "will be deemed also to refer to the Northern Mariana Islands." The reference to "possessions" in section 936 includes Guam, so the Northern Mariana Islands is also a possession for purposes of the possessions corporation tax credit.** (Even while the effective date for application of the federal income tax laws to the Northern Mariana Islands as a local territorial income tax on income derived from sources within the Northern Mariana Islands was postponed, section 601 of the Covenant otherwise became

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*Not addressed here is whether a Guam corporation doing business in the Northern Mariana Islands could claim a possessions corporation tax credit against the local territorial income tax of Guam or whether a Northern Mariana Islands corporation doing business in Guam could claim the credit against the local territorial income tax of the Northern Mariana Islands. Strict application of the substitution of "Guam" or "the Northern Mariana Islands" for the "United States" formula suggests the credit would be available in these situations, although Guam has no particular interest in or responsibility for attracting business to the Northern Mariana Islands nor does the Northern Mariana Islands have any interest in giving tax advantages to Northern Mariana Islands corporations for operating on Guam.

**Two knowledgeable authorities state that whether "possession" as used in section 936 includes the Northern Mariana Islands is unclear. Liebman, Income Tax Incentives for Investment in the Northern Mariana Islands, 2 University of Hawaii Law Review 389, 422 (1981); U.S. Dep't of the Treasury, Territorial Income Tax Systems: Income Taxation in the Virgin Islands, Guam, the Northern Mariana Islands, and American Samoa, 34 Bulletin for International Fiscal Documentation 260, 268, n. 18 (1980). Neither authority, however, gives any reason for excluding the Northern Mariana Islands from the definition of "possession." A more recent authoritative study concludes, again without discussion, that the Northern Mariana Islands is a "possession" for purposes of section 936. U.S. Dep't of the Treasury, The Operation and Effect of the Possessions Corporation System for Taxation 135 (4th annual report 1983).

effective on January 9, 1978. Covenant § 1003(b); Presidential Proclamation 4534, 42 Fed. Reg. 56593 (1977).)

—foreign sales corporations. Sections 801 to 805 of the Deficit Reduction Act of 1984, Public Law 98-369, 98 Stat. 494, amended the Internal Revenue Code to authorize favorable tax treatment for certain foreign sales corporations (FSCs). A portion of FSC income from foreign trade activities is treated as foreign source income not effectively connected with a trade or business within the United States. 26 U.S.C. § 921(a).* As such, it is not subject to federal income tax. Id. §§ 11(d), 882. Further, in general, a United States corporation may deduct from its taxable income all dividends received from an FSC in which it owns stock to the extent those dividends are attributable to foreign trade income. Id. § 245(c). Consequently, United States corporations may obtain significant tax advantages by organizing FSCs to carry on their export trading activities.

An FSC must be organized under the laws of a foreign country or a possession of the United States. Id. § 922(a)(1)(A)(ii). It must also maintain an office in a foreign country or in a possession of the United States.** Id. § 922(a)(1)(D)(i). The Northern Mariana Islands is specifically included as a "possession" in which an FSC may be organized and maintain an office. Id. § 927(d)(5).

FSCs receive a further tax advantage in that the possessions, including the Northern Mariana Islands, are not permitted to impose any tax of their own on the foreign trade income of a FSC prior to January 1, 1987. Id. § 927(e)(5).

FSCs are required to carry on their principal management activities outside of the United States, that is, in one or more foreign countries or possessions of the United States. Id. § 927(b)(1)(A). Similarly, for foreign trade income of a FSC to be eligible for exemption from federal income tax, significant "economic processes" in generating that income must have taken place outside the United States. Id. § 927(b)(1)(B). "Economic processes" include the solicitation, negotiation, and making of trading contracts, the processing and delivery of orders, payment for goods, and so forth. Id. § 927(d), (e).

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*Citations are to the Internal Revenue code, as amended by the Deficit Reduction Act.

**It does not appear to be required, however, that the office be maintained in the same foreign country or possession in which the FSC is organized.

FSCs thus make some contribution to the economies of the jurisdictions in which they elect to carry on their activities. As a consequence, since the enactment of the Deficit Reduction Act, eligible jurisdictions have devoted substantial effort to attracting FSCs. See, for example, DuPont Executives Get FSC Pitch, Pacific Daily News (Guam), October 27, 1984, at 3; Glenn: People Are Paying Attention, id., Focus supplement, October 26, 1984, at 12; DOW Eyes Saipan for FSC Site, id., October 23, 1984, at 1; FSC Support Office to Open Here, id., October 20, 1984, at 1; Reps to Promote FSC in CNMI, id., Focus supplement, October 19, 1984, at 2; Guam Woos U.S. Export Companies, U.S. News & World Report, October 8, 1984, at 64; The U.S. Virgin Islands--More than Tax Incentives for Foreign Sales Corporations, Wall Street Journal, October 8, 1984, at 29 (full page advertisement); Pacific Paradises . . ., id., September 19, 1984, at 1; Foreign Sales Corporations: You're Tax Exempt in Guam, id., September 7, 1984, (advertisement).

Administration and enforcement of the local territorial income tax. The application of federal income tax laws as a local tax of the Northern Mariana Islands in the same manner as those laws are in force in Guam means that the tax is administered and enforced by the government of the Northern Mariana Islands. Section 31(c) of the Organic Act of Guam, as amended, 48 U.S.C. § 1421i(c), provides:

> The administration and enforcement of the Guam Territorial income tax shall be performed by or under the supervision of the Governor [of Guam]. Any function needful to the administration and enforcement of the income-tax laws in force in Guam . . . shall be performed by any officer or employee of the government of Guam duly authorized by the Governor (either directly, or indirectly by one or more redelegations of authority) to perform such function.

Paragraph (d)(2) of the same section provides:

> The Governor or his delegate shall have the same administrative and enforcement powers and remedies with regard to the Guam Territorial income tax as the Secretary of the Treasury, and other United States officials of the executive branch, have with respect to the United States income tax. Needful rules and regulations not inconsistent with the regulations prescribed under section 7654(e) of the Internal Revenue Code . . . for enforcement of the Guam Territorial income tax shall be prescribed by the Governor.

(Section 7654(e) of the Internal Revenue Code authorizes the Secretary of the Treasury to issue regulations to coordinate the United States and Guam taxes on personal income and to require information from certain taxpayers subject to--or claiming to be subject to--Guam personal income taxes.)

Regulations issued by the government of the Northern Mariana Islands may not conflict with the federal income tax laws. See Government of Guam v. Koster, 362 F.2d 248 (9th Cir. 1966).

Criminal offenses under the local territorial income tax of the Northern Mariana Islands are offenses against the government of the Northern Mariana Islands, and are not offenses against the government of the United States. See 48 U.S.C. § 1421i(f). The District Court for the Northern Mariana Islands has civil and criminal jurisdiction over disputes involving the local territorial income taxes of the Northern Mariana Islands. See id. § 1421i(g), (h). See also Dudley v. Commissioner, 258 F.2d 182 (3d Cir. 1958) (Tax Court of the United States does not have jurisdiction over challenge to federal income tax laws applied as local territorial income tax of the Virgin Islands).

Section 3(d) of Public Law 95-348, 92 Stat. 487 (1978), authorizes and directs the Secretary of the Treasury, on the request of the governor of the Northern Mariana Islands, to administer and enforce the territorial income tax and/or certain other taxes of the Northern Mariana Islands. The governor's request must be pursuant to legislation enacted by the Northern Mariana Islands. Administration and enforcement by the Secretary is to be without cost to the Northern Mariana Islands. By additional actions of the legislature and governor of the Northern Mariana Islands, administration and enforcement can be returned from the Secretary to the government of the Northern Mariana Islands.

Section 204 of Public Law 96-205, 94 Stat. 84 (1980), simplified the procedure for requesting federal assumption of administration and enforcement of the local tax. Section 204 also, if federal administration and enforcement is requested, encourages the employment of citizens of the Northern Mariana Islands by the Secretary of the Treasury, requires the Secretary to establish a taxpayer information service, and ensures that taxes collected are paid "directly upon collection" into the treasury of the Northern Mariana Islands.

The United States Department of the Treasury has taken the position that, if it is to administer and enforce taxes in the Northern Mariana Islands, "it will assume full authority over the issuance of regulations, collection of tax, employment of staff

and other functions." Letter from Roscoe L. Egger, Jr., Commissioner of Internal Revenue, to Northern Mariana Islands Governor Pedro P. Tenorio (June 11, 1982). The Northern Mariana Islands has informed the Department of the Treasury that it "is unwilling to surrender full administration and enforcement authority over its income tax system" to the Internal Revenue Service. Letter from Pedro P. Tenorio, Governor of the Northern Mariana Islands; Olympio T. Borja, President of the Northern Mariana Islands Senate; and Benigno R. Fitial, Speaker of the Northern Mariana Islands House of Representatives, to Donald T. Regan, Secretary of the Treasury (September 24, 1982). See also IRS Takeover on Hold for Now, Pacific Daily News, December 11, 1980, at 3. The government of the Northern Mariana Islands subsequently announced its intention not to seek administration and enforcement of the Internal Revenue Code by the Department of the Treasury when the temporary partial exemption from the federal income tax imposed as a local territorial tax expired on January 1, 1985. Quarterly Report Reflects IRC Implementation Progress, Executive Branch Digest (Office of the Governor of the Northern Mariana Islands), September 30, 1984, at 11. See also NMI to Administer Guam-style Tax Code, Pacific Daily News (Guam), September 7, 1984, at 9; CNMI to Enforce IRC Sans IRS, Marianas Variety, August 24, 1984, at 3; Tax Task Force Defers Invitation to IRS, id., August 17, 1984, at 1; Governor's Authority on Tax Code Sought, Pacific Daily News, August 17, 1984, at 3.

Allocating tax collections between the Northern Mariana Islands and the United States. Individual income tax payments received by the Northern Mariana Islands and by the United States are divided between the two jurisdictions by the same method used to distribute individual income tax receipts between Guam and the United States. Tax payments attributable to income derived from sources within the Northern Mariana Islands belong to the treasury of the Northern Mariana Islands, regardless of which jurisdiction actually receives the payments. 26 U.S.C. § 7654(a)(2). Likewise, taxes on income derived from sources within the United States belong to the United States. Id. § 7654(a)(1). All other tax payments go to the jurisdiction with which the taxpayer files his or her return. Id. § 7654(a)(3). At least once a year, funds are to be transferred between the treasuries of the Northern Mariana Islands and the United States as necessary to distribute payments received by each jurisdiction in accordance with these rules. Id. § 7654(c). The source of particular items of income is determined according to the same rules used to identify income as foreign or domestic under the federal tax laws. Id. § 7654(b)(3).

No mechanism for distributing receipts between the Northern Mariana Islands and Guam is apparent. An individual taxpayer residing in the Northern Mariana Islands, for example, pays taxes to the government of the Northern Mariana Islands on income derived from sources in Guam and from sources in the United States.* Taxes derived from sources within the United States belong to the United States. Taxes derived from sources on Guam, however, remain the property of the Northern Mariana Islands. Likewise, taxes paid by an individual taxpayer residing on Guam on income from sources in the Northern Mariana Islands remain in the treasury of Guam and are not transferred to the treasury of the Northern Mariana Islands.

Taxes on the income of military personnel stationed in the Northern Mariana Islands are subject to special treatment. The Soldiers and Sailors Civil Relief Act, 50 U.S.C. App. §§ 501 et seq., is specifically applicable to the Northern Mariana Islands in the same way it applies to Guam. Covenant § 605. By that Act, military personnel stationed on Guam or in the Northern Mariana Islands do not become residents of Guam or the Northern Mariana Islands for purposes of local taxes. 50 U.S.C. App. § 574. Despite that statute, however, the government of the United States pays to Guam or the Northern Mariana Islands, as the case may be, taxes collected by the United States on compensation paid to those persons. 26 U.S.C. § 7654(d); Covenant § 601(c).

Issues of interpretation--"income tax laws in force." Section 601(a) of the Covenant provides that:

> The income tax laws in force in the United States will come into force in the Northern Mariana Islands as a local territorial income tax on the first day of January following the effective date of this Section, in the same manner as those laws are in force in Guam.

(Emphasis added.) The suggestion has been made that changes in the income tax laws of the United States made after the effective date of section 601 do not apply in the Northern Mariana Islands. The language of section 601(a) is contrasted with section 31 of the Organic Act of Guam, 48 U.S.C. § 1421i(a), which provides:

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*Note that none of these taxes can rebated to the taxpayer under section 602 of the Covenant, since only taxes on income from sources within the Northern Mariana Islands can be rebated under that section.

> The income-tax laws in force in the United States of America and those which may hereafter be enacted shall be held to be likewise in force in Guam . . . .

(Emphasis added.) The omission of any reference to later amendments to the federal tax laws in section 602(a) is argued to mean that only the federal law in force on the effective date of that section applies as a local territorial tax of the Northern Mariana Islands, regardless of subsequent amendments to that law as it applies elsewhere.

This reading of section 601 is supported by its proponents with an argument based on the principle of "no taxation without representation." The people of the Northern Mariana Islands may be deemed to have approved the imposition of the federal income tax as a local territorial tax because they approved the Covenant, the argument goes. Amendments to the federal tax laws after approval of the Covenant, however, if applied to the Northern Mariana Islands would constitute imposition of taxation without participation by representatives of the Northern Mariana Islands.

While it is initially plausible, this reading of section 601 must be rejected. When one provision of law--in this case, section 601--incorporates by reference a body of laws--here, the federal income tax laws--that body of laws is taken with whatever changes may be subsequently made from time to time. Somermeier v. District Director of Customs, 448 F.2d 1243, 1244 (9th Cir. 1971); 2A Sutherland, Statutory Construction § 51.08 (4th ed. Sands 1973).

Further, section 601 itself states that the federal income tax laws are to apply to the Northern Mariana Islands "in the same manner as those laws are in force in Guam." Since changes in the federal income tax laws alter the local territorial income tax of Guam, so too do they alter the local territorial income tax of the Northern Mariana Islands.

--the "abate vs. rebate" debate. Section 602 of the Covenant gives the Northern Mariana Islands the power to enact local legislation to "provide for the rebate of any taxes received by it . . . on income derived from sources within the Northern Mariana Islands." In 1979, the first year the federal income tax laws were to be in effect as the local territorial tax, the Northern Mariana Islands enacted legislation giving every person subject to the tax "a rebate of one hundred percent (100%) of such tax . . . except that no amounts of such tax imposed on income derived from sources without

the Northern Mariana Islands shall be rebated." Northern Mariana Islands Public Law 1-30, § 1. Actual payment of the tax prior to its rebate to the taxpayer was generally not required. Id. § 3(a). The United States Congress reacted by enacting section 205(c) of Public Law 96-205, 94 Stat. 84 (1980), which stated that "[i]t is the sense of Congress that the term 'rebate' as used in section 602 [of the Covenant] does not permit the abatement of taxes." That same law temporarily exempted residents of the Northern Mariana Islands from payment of the tax on income derived from sources within the Northern Mariana Islands until January 1, 1981, and, conditional on the repeal of the rebate provisions of Northern Mariana Islands Public Law 1-30, until January 1, 1982. Public Law 96-205, § 205(b), 94 Stat. 84 (1980). The rebate provisions of Northern Mariana Islands Public Law 1-30 were not immediately repealed but, in section 303 of Public Law 96-597, 94 Stat. 3477 (1980), Congress furthered postponed the effective date of the tax to January 1, 1983, and "suspended" until that date the provision expressing the sense of Congress that the power to rebate the tax does not encompass the power to do away with the tax entirely.

In May 1982 the Northern Mariana Islands enacted its comprehensive Revenue and Taxation Act of 1982, Northern Mariana Islands Public Law 3-11, which, among other things, repealed Northern Mariana Islands Public Law 1-30 with its 100-percent rebate provisions. Chapter VII of the new law, however, reenacted the rebate provisions of the earlier law with virtually no change.* The new law, morever, added a definition of "rebate" at odds with the sense-of-Congress definition. The new definition reads:

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*Through an apparent error in drafting, the rebate would have only applied to tax years before the federal tax laws became applicable as a local territorial income tax to income derived from sources within the Northern Mariana Islands, which would have rendered the rebate meaningless. On December 30, 1982, immediately before the local territorial income tax was to become applicable to income derived from sources within the Northern Mariana Islands by residents of the Northern Mariana Islands, pursuant to United States Public Law 96-597, Northern Mariana Islands Public Law 3-37 was enacted. Section 19 of that law corrected the earlier tax law to make the rebate provisions effective for all tax years beginning prior to termination of the trusteeship, when most citizens of the Northern Mariana Islands will become citizens of the United States.

> "Rebate" means an adjustment, reduction, return, credit, nontaxable refund, or other nontaxable payment of all or part of any tax, as provided by the Commonwealth of such amount of the taxes paid by a person. The term "rebate" shall apply only to any tax imposed on income from sources within the Commonwealth . . . .

In December 1983, section 3 of Public Law 98-213, 97 Stat. 1459, was enacted, extending the temporary exemption for residents of the Northern Mariana Islands on income derived from sources within the Northern Mariana Islands until January 1, 1985, and amending its earlier sense-of-Congress provision to give a specific definition of "rebate":

> As provided in section 602 of [the Covenant] the term 'rebate of any taxes' shall, effective January 1, 1985, apply only to the extent taxes have actually been paid pursuant to section 601 of said Act, shall not exceed the amount of tax actually paid for any tax year, and may only be paid following the close of the tax year involved. Notwithstanding any other provision of law, effective January 1, 1985, the Commonwealth of the Northern Mariana Islands shall maintain, as a matter of public record, the name and address of each person receiving such a rebate, together with the amount of the rebate, and the year for which such rebate was made.

See also House Report 98-174, at 4-5 (1983).

But for the specific definition of "rebate" given by Congress in Public Law 98-213, two questions would exist as to the meaning of the term as used in section 602 of the Covenant. The first question is whether the power to rebate taxes includes the power to rebate 100 percent of all taxes paid by a taxpayer. The second question is whether the tax to be rebated must actually be paid to the government before it can be rebated.

--the "abate vs. rebate" debate--a 100-percent rebate? Section 602 of the Covenant allows the rebate "of any taxes received" (emphasis added) by the government of the Northern Mariana Islands. That language alone strongly implies that the government of the Northern Mariana Islands may return 100 percent of the taxes it receives (other than taxes on income not derived from sources within the Northern Mariana Islands). Indeed, if "any" is construed to permit the rebate of only some percentage of taxes less than 100 percent, the percentage of taxes that can be rebated becomes problematical.

In its Section by Section Analysis of the Covenant, the Marianas Political Status Commission stated, with regard to the rebate power, that:

> The power to rebate taxes will mean that the Northern Mariana Islands Government can adjust the impact of the local territorial income tax in any way which it deems appropriate to the local conditions in the Northern Marianas. In effect, it means the Northern Marianas Government will have complete authority to write its own tax code.*

Accordingly, the Northern Mariana Islands may, under section 602 of the Covenant, enact legislation providing for the rebate of 100 percent of taxes collected on income derived from sources within the Northern Mariana Islands. (Section 3 of Public Law 98-213 does not suggest that only some lesser percentage of taxes collected may be rebated.)

--the "abate vs. rebate" debate--rebate without prior payment? Dictionary definitions of "rebate" are generally broad enough to support an implication that the sum rebated must have been paid beforehand as well as the contrary implication that the sum rebated may be deducted before initial payment. See Webster's Third New International Dictionary 1892 (1966); 8 Oxford English Dictionary 219 (1933). A prominent legal dictionary, referring specifically to tax rebates, defines a "tax rebate" as "an amount returned (ie. refunded) to the taxpayer after he has made full payment of the tax." Black's Law Dictionary 1139 (5th ed. 1979).

Webster's New Dictionary of Synonyms 218 (1978) distinguishes between "rebate" and "abatement." "Rebate" is defined as "an amount deducted and returned after payment" (with the example "a rebate on an income tax"). "Abatement" is defined as "a deduction from a levied tax or impost."

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*The Analysis is reprinted in Hearings on the Covenant to Establish the Commonwealth of the Northern Mariana Islands before the Subcommittee on Territorial and Insular Affairs of the House Committee on Interior and Insular Affairs, 94th Cong., 1st Sess. 626 (1975) and in Hearings on the Northern Mariana Islands before the Senate Committee on Interior and Insular Affairs, 94th Cong., 1st Sess. 356 (1975).

The Internal Revenue Code, however, in other contexts defines "rebate" to include "abatement." See 26 U.S.C. §§ 6211(b)(2), 6653(c).

Section 602 of the Covenant allows the government of the Northern Mariana Islands by local law to "provide for the rebate of any taxes received by it" (emphasis added). Section 602 also refers to the power "to rebate collections of the local territorial income tax received by [the government of the Northern Mariana Islands]" (emphasis added). The negotiating history of the Covenant also is uniform in its references to rebates of taxes "received" or "collected." See Senate Report 94-433, The Covenant to Establish a Commonwealth of the Northern Mariana Islands 65, 80 (1975); House Report 94-364, Approving the "Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America" 10 (1975); Marianas Political Status Commission, Section by Section Analysis of the Covenant 71-72 (1975).*

The legislative and negotiating history of section 602 of the Covenant show that the power to rebate was intended to be "similar to the power which Guam has with respect to its local territorial income tax." Senate Report 94-433, The Covenant to Establish a Commonwealth of the Northern Mariana Islands 80 (1975). See also Marianas Political Status Commission, Section by Section Analysis of the Covenant 72 (1975); and the section-by-section analysis of the Covenant prepared by the executive branch of the United States Government, reprinted at Hearings before the Subcommittee on Territorial and Insular Affairs of the House Committee on Interior and Insular Affairs on H.J. Res. 549 et al. to Approve the "Covenant to Establish a Commonwealth of the Northern Mariana Islands," 94th

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*See also the section-by-section analysis of the Covenant prepared by the executive branch of the United States Government, reprinted at Hearings before the Subcommittee on Territorial and Insular Affairs of the House Committee on Interior and Insular Affairs on H.J. Res. 549 et al. to Approve the "Covenant to Establish a Commonwealth of the Northern Mariana Islands," 94th Cong., 1st Sess. 391 (1975); and Office of the Plebiscite Commissioner, The Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America Explained 7 (1975), reprinted at Hearings before the Subcommittee on Territorial and Insular Affairs of the House Committee on Interior and Insular Affairs on H.J. Res. 549 et al. to Approve the "Covenant to Establish a Commonwealth of the Northern Mariana Islands," 94th Cong., 1st Sess. 544, 551(1975).

Cong., 1st Sess. 384 (1975). The only power to rebate the local territorial income tax of Guam at the time the Covenant was negotiated and approved was vested in the Guam Economic Development Authority. The Authority was (and still is) authorized under Guam law to grant tax advantages to certain corporations in order to further the economic development of Guam. In general, the Authority for specified periods may grant "abatements" of certain local taxes and grant "rebates" of up to 75 percent of the corporate income tax and of up to 75 percent of all income tax on dividends paid by a qualified corporation. Guam Government Code §§ 53577-53579 (1970).*

Significantly, the special privileges the Authority may grant are termed abatements with respect to taxes locally imposed and rebates with respect to the federal income tax imposed as a local territorial tax. Moreover, for abatements "the actual payment of the tax in question to the Government shall not be required." Guam Government Code § 53581 (1970). For rebates, however, "the amount of tax due prior to rebate shall be deposited with the government at the time of filing the income tax return. The Tax Commissioner . . . shall immediately thereafter cause the return to be reviewed and audited, and if the rebate is found in order, shall cause the amount deposited to be returned to the taxpayer within one hundred eighty (180) days from the date of deposit." Id.

In summary, even though "rebate" as a matter of general usage can mean a deduction made before payment, the language of the Covenant and its legislative and negotiating history compel the conclusion that section 602 authorizes the rebate only of taxes previously paid to the government of the Northern Mariana Islands. Section 3 of Public Law 98-213 thus does not alter the meaning of section 602 of the Covenant in this respect.

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*"Prior to amendment in 1968, . . . the Organic Act [of Guam]. . . provided that all laws enacted by the Guam legislature ultimately would be reported to Congress, and unless Congress acted to annul the law within one year, it was deemed to have congressional approval. Guam Organic Act § 19, ch. 512, § 19, 64 Stat. 389 (1950). . . . The original law granting tax rebates was passed by the Guam legislature and submitted to Congress while this pre-1968 version was still in effect, and Congress failed to annul the law within the one-year period." Ramsey v. Chaco, 549 F.2d 1335, 1338 (9th Cir. 1977) (holding Guam's tax rebate laws do not violate section 31 of the Organic Act of Guam, which applies the United States Internal Revenue Code to Guam as a local territorial income tax).

Discussion.

The "abate vs. rebate" debate is a dispute over the extent to which the federal income tax laws, applied as the local territorial income tax laws of the Northern Mariana Islands, may be modified by the government of the Northern Mariana Islands. As such, it is an argument over the meaning of words used in the Covenant. The debate, however, is symptomatic of a larger issue: Regardless of the provisions of the Covenant, how closely should the tax system of the Northern Mariana Islands be tied to the federal tax system? Closely related is an even broader issue: What is the best system of taxation for the Northern Mariana Islands? That question is beyond the purview of this treatment, since lines must be drawn somewhere and the function of the Commission is to examine the applicability of federal laws to the Northern Mariana Islands, not to propose an entire legal regime for the Northern Mariana Islands. Fortunately, the question of the best tax system for the Northern Mariana Islands has been the subject of able treatment elsewhere. See Report of the Advisory Commission on Revenues and Taxation, Commonwealth of the Northern Mariana Islands (1982); O. Oldman, Tax and Revenue Reform for the Commonwealth of the Northern Mariana Islands (1982) (consultant's revised report to the Advisory Commission on Revenues and Taxation).

Arguments in favor of local tax autonomy for the Northern Mariana Islands are generally the same as arguments against applying the federal income tax laws to the Northern Mariana Islands in one form or another. (And, likewise, arguments against local tax autonomy generally are arguments in favor of applying the federal income tax laws to the Northern Mariana Islands.)

Factors in evaluating taxation alternatives. Among the sometimes overlapping factors to be considered in evaluating alternative relationships between the federal income tax laws and the tax laws of the Northern Mariana Islands are the following:

(1) Revenue-raising capability. To what extent does the tax provide revenues needed to finance government functions in the Northern Mariana Islands?

(2) Complexity in administration. How complex is the system to administer?

(3) Complexity to the taxpayer. How difficult is calculation and payment of taxes for the taxpayer?

(4) Loopholes. To what extent does the system offer ambiguities and inconsistencies that enable taxpayers to avoid taxes in the Northern Mariana Islands, the United States, or other jurisdictions?

(5) Adaptability. To what extent is the system adaptable to changing circumstances in the Northern Mariana Islands?

(6) Equity. Is the treatment accorded taxpayers in the Northern Mariana Islands fair in comparison to the treatment accorded to taxpayers in Guam, other United States territories, and the States of the United States?

(7) Compatibility with the Covenant. Is the system of taxation compatible with the Covenant, or must the Covenant be amended to allow implementation of the system?

Local autonomy. The institution of a locally-autonomous system of taxation, with no links to the federal income tax laws, is favored by many persons and businesses in the Northern Mariana Islands. Northern Mariana Islands Governor Pedro P. Tenorio, in his January 1983 State of the Commonwealth address, stated that "permanent deferral" of the application of the federal income tax laws to the Northern Mariana Islands is his administration's top priority and called for the Northern Mariana Islands to develop and administer its own tax system.

Karla Hoff, an economist then in the United States Department of the Treasury, has described the relationship that could exist between the tax laws of the Northern Mariana Islands and the federal income tax laws if the Northern Mariana Islands were granted complete authority to write its own tax laws. See Hoff, U.S. Federal Tax Policy Towards the Territories: Past, Present, and Future, 37 Tax Law Review 51, 96-97 (1981). The following discussion is drawn in large part from her description.

If the Northern Mariana Islands administered its own tax system, imposed under its own law, the Northern Mariana Islands would be treated for most purposes of the federal income tax laws in the same way a foreign country is treated. United States citizens residing in the Northern Mariana Islands would continue to be subject to federal income tax on their worldwide income except for income derived from sources within the Northern Mariana Islands, which would be exempt from federal income taxes. They would also receive a federal tax credit for taxes paid to the Northern Mariana Islands on income

derived from foreign sources, so that income would not be taxed by both the Northern Mariana Islands and the United States. United States citizens residing in the Northern Mariana Islands would be subject to provisions in the federal income tax laws designed to prevent "tax avoidance and evasion by U.S. taxpayers who reside in or derive income from a foreign country." Id. at 96.

Local autonomy vs. mirror taxation--revenue-raising capability. The revenue a local tax system can generate is dependent on the provisions of that local tax system.

Proponents of local tax autonomy for the Northern Mariana Islands have argued that the earned income credit provisions of the federal income tax laws greatly reduce the revenue-raising capability of those laws when they are applied to the Northern Mariana Islands as a local territorial income tax. The earned income credit, it will be recalled, to the extent it exceeds the taxpayer's total tax liability, is paid by the government to the taxpayer. Because the economy of the Northern Mariana Islands is not highly developed, a disproportionately large number of low-income wage earners will be eligible to receive earned income credit payments from the government of the Northern Mariana Islands. Since these payments must be made from the tax receipts of the government of the Northern Mariana Islands, the net revenues of that government are correspondingly reduced.

Persons opposing tax autonomy for the Northern Mariana Islands generally recognize the detrimental impact of the earned income credit on the tax revenues of the Northern Mariana Islands. The late Congressman Phillip Burton (who opposed tax autonomy for the Northern Mariana Islands) suggested that the United States Congress, if requested to do so, would probably enact legislation allowing the Northern Mariana Islands by local law to reduce or eliminate the credit as a part of its local territorial income tax.

The governor of the Northern Mariana Islands has argued that the prominence of the Japan-based tourism industry in the economy of the Northern Mariana Islands adversely affects revenues from any tax based on income. Tourists are generally sold in Japan package tours to the Northern Mariana Islands that include round-trip airfare, meals, and ground transportation in the Northern Mariana Islands, and other services both in Japan and the Northern Mariana Islands. Determining the income taxable by the Northern Mariana Islands and collecting the tax thereon is thought to be more difficult than collecting a locally-imposed tax on gross business revenues. See letter from Northern Mariana Islands Governor Pedro P. Tenorio to Senator James A. McClure (December 30, 1983), submitted in compliance with section 3(c) of Public Law 98-213, 97 Stat. 1459 (1983).

Local autonomy can also be justified on the ground that, since the federal government receives no revenues from the tax system in effect in the Northern Mariana Islands, it should not control the structure of that system. See R. Bastin & A. Laffer, Government Policies and Economic Growth in Guam 193 (report commissioned by 16th Guam Legislature; 1981).

Local tax autonomy also may yield more revenues than application of the federal income tax laws as a local territorial tax laws if the local tax system has lower costs of administration and enforcement. The costs to the government of the Northern Mariana Islands of enforcing federal tax laws as a local tax are apt to be high, due in large part to the complexity of the federal laws. Present federal law, however, requires the United States Department of the Treasury to administer and enforce those laws in the Northern Mariana Islands at no cost to the Northern Mariana Islands, but only if the Northern Mariana Islands requests that assistance. Public Law 95-348, § 3(d), 92 Stat. 487 (1978), as amended by Public Law 96-205, § 204, 94 Stat. 84 (1980). (The Northern Mariana Islands has not requested federal administration and enforcement pursuant to the terms of that legislation.)

The revenue-raising capability of a locally-imposed tax cannot be fully gauged without assessing the possible adverse affect of instituting such a system on federal grants to the Northern Mariana Islands. The first mirror tax was imposed in the Virgin Islands because

> Congress reasoned that it was unfair that wealthy planters in the Virgin Islands should escape U.S. income taxes, while mainland taxpayers provided funds to support the Virgin Islands government.

Hoff, U.S. Federal Tax Policy towards the Territories, 37 Tax Law Review 51, 63 (1981).

—complexity in administration. The administrative complexity of a locally autonomous tax system depends on the provisions of that tax system. It is unlikely, however, that any local tax system would rival the federal income tax laws in complexity.

> The law of federal income taxation is a complex and difficult subject. Based as it has been on statutory laws which have been subject to constant amendment and supplemented by Regulations and rulings of the administrative authorities, and interpreted by decisions of the various courts, the Tax Court, the Federal district courts, the Federal courts of appeals, the Court of Claims,

> and the United States Supreme Court, it is far from easy to find and apply the correct principles to a given question arising in connection with tax liability for a particular year.

1 Mertens, Law of Federal Income Taxation § 1.01 (rev. ed. 1981). The frequency of changes in federal tax laws and the need to revise or clarify existing regulations have caused a considerable backlog in the drafting of regulations, so that "current" regulations frequently do not reflect existing law. See U.S. General Accounting Office, Further Improvements Needed in Processing Tax Regulations (Report GAO/GGD-84-12; 1983).

In themselves, then, the federal income tax laws, although simple in basic structure, are extremely complicated in detail. When the federal laws are applied as a territorial income tax, putting the territory in the place of the United States, the complexities of administration are multiplied, particularly when taxpayers residing in either the territory or the United States have income from both places. In the case of the Northern Mariana Islands, the application of the federal income tax laws as a local "mirror" tax are further complicated by the existence of another mirror tax system on nearby Guam, a territory with many economic ties to the Northern Mariana Islands.*

To administer the mirror tax, the Northern Mariana Islands must draw the necessary expertise from the small local population or bring in costly outside assistance. In either case, the allocation of local resources to tax administration and enforcement may be disproportionate to the revenues collected and to the economy as a whole. See generally U.S. Dep't of the Treasury, Territorial Income Tax Systems: Income Taxation in the Virgin Islands, Guam, the Northern Mariana Islands and American Samoa, 34 Bulletin for International Fiscal Documentation 260, 273 (1980); Liebman, Income Tax Incentives for Investment in the Northern Mariana Islands, 2 University of Hawaii Law Review 389, 422-23 (1981). Guam, where the federal income tax laws have applied as a local territorial tax since

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*A person's tax liability is affected by three principal variables: citizenship, residence, and source of income. When four taxing jurisdictions--the Northern Mariana Islands, the United States, Guam, and "foreign" (or other)--are involved, there are sixty-four different possible combinations of citizenship, residence, and source of income. The possibilities multiply when some individuals receive income from more than one jurisdiction.

1951, continues to have difficulties in administration of the tax and collection of taxes due. These difficulties in large part are attributable to Guam's lack of the financial resources necessary to improve administration and collection. U.S. General Accounting Office, Followup of Guam's Administration of its Income Tax Program (Report GAO/GGD-84-11; 1983); U.S. General Accounting Office, The Government of Guam's Administration of its Income Tax Program (Report GGD-80-3; 1979).

The complexity of administering the mirror income tax in the Northern Mariana Islands makes a strong argument for preferring implementation, instead, of a local system of taxation. Weakening that argument for the Northern Mariana Islands is the open offer, under Public Law 95-348 as amended by Public Law 96-205, for the Federal Government to assume at no cost to the Northern Mariana Islands administration and enforcement of the mirror tax in the Northern Mariana Islands. Nonetheless, federal assumption of the costs of administration does not eliminate those costs (although some economies may be possible).

The mirror tax system not only complicates the life of territorial tax administrators. The United States Internal Revenue Service also is confronted by extra work. Applying the clear, if not always simple, provisions of the system is difficult enough; not all provisions, however, are clear. For example, in the tax relationship between Guam and the United States (which, under section 601 of the Covenant, is the same as that between the Northern Mariana Islands and the United States), inconsistencies have existed in the withholding of taxes on compensation paid to federal employees and retirees living on Guam and on compensation paid residents of Guam serving in the United States armed forces. Hoff, U.S. Federal Tax Policy Towards the Territories: Past, Present, and Future, 37 Tax Law Review 51, 82 (1981); Feds Give $1.6 Million More in Tax Reimbursement for Guam, Pacific Daily News (Guam), December 7, 1983, at 1.

--complexity for the taxpayer. Voluntary compliance with tax obligations is enhanced if the taxpayer can calculate, report, and pay his or her taxes without great difficulty. Yet, "every country has tax laws that are far from being generally understood by the public." 17 Encyclopaedia Britannica, Taxation 1076, 1080 (15th ed. 1980).

For an individual wage earner, with no sources of income other than wages and with not enough deductions to justify itemization, preparation of a federal income tax return is not exceedingly difficult. Taxes are withheld from wages as the wages are paid, so the taxpayer is presented with a minor paperwork chore once a year

when tax returns are due. For some persons in the Northern Mariana Islands, language difficulties or lack of education might make this paperwork more than a minor chore. This situation is little different than that encountered by some persons in the United States, in ethnic enclaves and economically depressed areas, for example. In the United States, friends, relatives, and taxpayer assistance organizations--both nonprofit and commercial--can provide assistance to taxpayers unable to complete their own tax returns. It is likely, although not inevitable, that similar arrangements would soon develop in the Northern Mariana Islands.

For large businesses and high-income individuals, assistance in complying with mirror tax obligations can probably be obtained--at a price, of course--from existing accounting and legal firms in the Northern Mariana Islands and on Guam.

The greatest difficulties in complying with mirror taxation are likely to be experienced by the many very small local business operations in the Northern Mariana Islands. These operations, which include, among other ventures, "mom and pop" grocery stores, neighborhood bars, subsistence farms which sell their surpluses, schoolyard snack vendors, and small laundromats, in most cases will need assistance in complying with mirror tax obligations. For some, the cost of obtaining that assistance may be the difference between continued operation and liquidation.

Taxpayers, such as United States corporations, accustomed to paying federal income taxes also have difficulties in determining their tax obligations under mirror tax systems. "In general, U.S. corporations operating in the territories have not been made aware that they are subject to territorial taxation under the rules applicable to foreign corporations." U.S. Dep't of the Treasury, Territorial Income Tax Systems: Income Taxation in the Virgin Islands, Guam, the Northern Mariana Islands and American Samoa, 34 Bulletin for International Fiscal Documentation 260, 274 (1980).

Taxpayer uncertainty caused by the complexities of mirror taxation may inhibit investment in the Northern Mariana Islands, since investors are reluctant to invest when the tax consequences of investment cannot be calculated with reasonable certainty.

In addition to the complexities that come with the federal income tax laws and those that arise from the application of those laws as a mirror tax, further complications arise from particular characteristics of the Northern Mariana Islands. For example, extended family relationships in the Northern Mariana Islands mean many individuals may reside in several different households during the course of the year. Determining which head of household is entitled to claim an individual as a dependent could be difficult. Or, as another example, family farm surpluses, as is natural in a

climate favoring rapid spoilage of food, are shared with others both as a moral obligation and in the expectation of later reciprocity. Gifts of food (or anything else) are not taxable as income. 26 U.S.C. § 102(a). The United States Supreme Court has held, however, in some situations that something of value transferred out of moral obligation or in anticipation of future economic benefits is not a gift but is taxable income. Commissioner v. Duberstein, 363 U.S. 278, 285 (1960). Whether reciprocal transfers of farm products constitute taxable income to the recipients could pose a knotty question if the federal income tax laws are applied to the Northern Mariana Islands. If they are income, keeping track of income becomes excessively tedious and much of the socially-important spontaneity of the transfers is lost. If the transfers are not treated as income, income tax revenues could be diminished by an increase in such exchanges of property. The question of whether a transfer of property is income or a gift arises frequently, of course, in administering the federal income tax laws in the United States. The different cultural context in the Northern Mariana Islands may require different answers to similar questions.

Some of the complexity encountered by the taxpayer if the federal income tax laws are applied to the Northern Mariana Islands as a local territorial income tax may be avoided if the Northern Mariana Islands elects to have the United States Department of Treasury administer that tax. As a part of any such administration, the Department is required to establish at no cost to the Northern Mariana Islands "a taxpayers information service to provide such information and assistance to citizens of the Northern Mariana Islands . . . as may be necessary for the filing of returns and the payment of such taxes." Public Law 96-205, § 204(a)(3), 94 Stat. 84 (1980).

—loopholes. Local tax autonomy for the Northern Mariana Islands is also favored as a means of eliminating loopholes resulting from the interaction of the federal and local mirror tax systems. One of the foremost arguments against applying federal income tax laws as local territorial income tax laws is that the mirror system creates too many opportunities for tax avoidance and tax evasion. Thus, United States Department of the Treasury economist Karla Koff wrote, with reference to application of the mirror system to Guam and the Virgin Islands:

> . . . [T]he Federal income tax relationships with the Virgin Islands and Guam . . . create numerous opportunities for federal tax avoidance and evasion. Such opportunities arise from the fragmentation of tax jurisdiction over U.S. taxpayers and from the failure of particular U.S. tax provisions to take account of the special status of the Virgin Islands and Guam.

> . . . Under the Guam mirror system, an individual who claims residence [on Guam] . . . has no obligation to file a U.S. tax return. Although residents of a territory are required to pay tax on their worldwide income under the U.S. income tax laws administered by the territory, individuals have an incentive to make claims to territorial residence because the Virgin Islands and Guam do not have the resources nor, apparently, the political will to enforce the Code . . . .
>
> An individual who does change residence from the United States to the Virgin Islands or Guam, or vice-versa, may attempt to change accounting methods in order to minimize tax. The tax savings cold be substantial . . . .
>
> . . . The ability of a U.S. parent-U.S. subsidiary together to escape tax on the income of the subsidiary in the territory creates a strong incentive for artificial profit-sharing by U.S. corporations to the territories.

Hoff, U.S. Federal Tax Policy Towards the Territories: Past, Present, and Future, 37 Tax Law Review 51, 82-84 (1981).

While the above-quoted passage is concerned with the loss of federal tax revenues, it is possible in particular instances that taxpayer maneuvers could also result in lost territorial tax revenues.

Documenting the existence of loopholes is difficult. Enforcement authorities are, of course, not anxious to publicize loopholes. Likewise, persons taking advantage of loopholes do not want to draw attention to the goose that lays golden eggs.

Nonetheless, that major loopholes are found with some frequency is shown by federal regulations issued in 1982 and 1983 to prevent the escape of federal tax revenues. See 47 Fed. Reg. 57919 (December 29, 1982); Guam Throttles Golden Goose, Forbes, January 16, 1984, at 34; U.S. Moves to Bar Issuance by Territories of Billions of Dollars in Arbitrage Bonds, Wall Street Journal, December 21, 1983 at 34; A Treaty that May Sink Havens, Business Week, February 14, 1983, at 140; Guam Balks at Treasury's Bid to Slam Doors on Foreign Investors, Wall Street Journal, January 19, 1983, at 1; Foreign Investors Can Get Federal Tax Break Here, Pacific Daily News (Guam), October 6, 1982, at 4; Guam Could Become Financial Center, id. at 1.

Allowing the Northern Mariana Islands exclusive control over its own system of taxation does not guarantee that individuals with tax obligations to both the Northern Mariana Islands and the United States will not find methods of exploiting the relationship between

the two tax systems. Puerto Rico, for example, has its own tax system and Puerto Rican taxpayers receive favorable treatment under the federal tax laws. United States parent corporations, until recent amendments to section 936 of the Internal Revenue Code, could shift to their possessions-corporation* subsidiaries in Puerto Rico title to patents and other intangible assets. Royalties and other income derived from those assets thus became income derived from sources within the possession eligible for the possessions corporation tax credit. See House Conference Report 97-760, at 504-13 (1982); The Puerto Rico Revisions, New York Times, September 15, 1982, at D1; Puerto Rico Fears Tax Bill Will Devastate Economy, Washington Post, August 2, 1982, at A1.

—adaptability. A locally autonomous tax system for the Northern Mariana Islands would, almost by definition, be more adaptable to the changing needs and circumstances of the Northern Mariana Islands than a system applying the federal income tax laws as a local territorial tax of the Northern Mariana Islands. Whenever the federal income tax laws are amended, territorial mirror tax laws are amended without any action by the territory. The Northern Mariana Islands, through the use of the surtaxes and rebates authorized by 602 of the Covenant, can adjust the impact of the mirror tax in the Northern Mariana Islands and can offset changes in the federal income tax laws. With a locally autonomous tax system, however, the Northern Mariana Islands has complete control over its own taxes.

Tax systems not only raise revenue, but also attempt to regulate the economy and to promote social goals.** Changes in federal income taxes because of changing revenue needs of the Federal Government, the changing state of the national economy, and shifting social goals may be inappropriate for the Northern Mariana Islands. For example, if federal taxes are lowered to stimulate the national economy, the Northern Mariana Islands--lacking significant borrowing capabilities--must enact local surtaxes to keep its revenues constant. The local legislature may thus be confronted with the politically difficult task of raising taxes during a recession. See, for example, Budget Changes Could Mean $27.3 Million Loss, Pacific Daily News, March 2, 1982, at 7 (discussing effects of President Reagan's tax cuts on Guam revenues).

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*See the discussion, The corporate taxpayer--the "possessions corporations tax credit," under Present applicability, above.

**See the discussion, The goals of taxation, in An Overview of the Federal Tax System, above.

Adaptability to local circumstances may not always be an advantage. Politically powerful local interests may be able to persuade the local government to reduce their share of the community's tax burden much more easily than they could obtain favorable treatment under the federal income tax laws. See Sumitomo Pushes for Tax Break, Pacific Daily News (Guam), Focus Supplement, October 28, 1983, at 1; Commonwealth Oil Threatens to Close Puerto Rican Refinery, Wall Street Journal, September 28, 1981, at 16; GORCO Threatens Pullout, Pacific Daily News, May 29, 1981, at 1; Fate of Virgin Islands Oil Refinery Entangled in Economics and Emotion, New York Times, April 15, 1981, at A17. This argument, of course, cuts in two directions. Territorial governments may want to reduce tax obligations for particular firms in order to convince them to establish operations in the territory. (The rebate authority granted by section 602 of the Covenant allows the Northern Mariana Islands to grant tax breaks for this purpose if the federal income tax laws are applied as a territorial tax of the Northern Mariana Islands. These tax breaks would be sought and defended with the same vigor as would favorable treatment under a tax system not linked to the federal income tax laws.)

Both the Northern Mariana Islands and nearby Guam seek additional economic development. The greater autonomy each jurisdiction has over its own taxation, the greater the likelihood the two jurisdictions will compete in offering tax advantages to prospective investors. The ultimate effect may be that each jurisdiction must choose between imposing relatively high tax rates on other taxpayers or reducing expenditures for police protection, education, and other public services.* But again, the rebate authority that both the Northern Mariana Islands and Guam now have is such that mutually-injurious competition may take place under the federal income tax laws applied as local mirror taxes. Further, controlling the two jurisdictions by federal law to prevent such competition may be unduly paternalistic.

--equity. A major objection to allowing the Northern Mariana Islands to operate its own tax system, not linked to federal income tax laws, is that the Northern Mariana Islands would be given an

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*But the new investors, even though paying few taxes themselves, may stimulate the local economy sufficiently by their activity so that other taxpayers--through greater sales or income--pay more and overall tax collections are increased. Such was the experience with Operation Bootstrap in Puerto Rico. See U.S. Dep't of the Treasury, The Operation and Effect of the Possessions Corporation System of Taxation 1 (4th annual report 1983). At some point, however, reducing tax rates for only some taxpayers becomes unfair to other taxpayers similarly situated.

unfair economic advantage over neighboring Guam. Guam, of course, is subject to federal income tax laws applied as a territorial income tax.

This objection presupposes that the local system of the Northern Mariana Islands would impose lower taxes than Guam's mirror system. If taxes in the Northern Mariana Islands are less than in Guam, the Northern Mariana Islands will have an advantage over Guam in luring prospective investors and may even cause wealthy Guamanians and existing Guam commercial enterprises to move to the Northern Mariana Islands. See Murphy, Pipe Dreams, Pacific Daily News (Guam), October 6, 1983, at 23 ("at least two Guam businessmen . . . have now established residency in Saipan, because of the tax breaks they get there").

One possible means of treating the Northern Mariana Islands and Guam equitably is to allow each to develop and administer its own system of taxation. That proposal has at least some support on Guam. See Gov Guam to Lobby for Local Tax System, id., February 15, 1983, at 3.

Puerto Rico and American Samoa now enjoy local tax autonomy. 26 U.S.C. §§ 931-933; Hoff, U.S. Federal Tax Policy Towards the Territories, 37 Tax Law Review 51, 60 (1981); U.S. Dep't of the Treasury, Territorial Income Tax Systems: Income Taxation in the Virgin Islands, Guam, the Northern Mariana Islands and American Samoa, 34 Bulletin for International Fiscal Documentation 260, 269 (1980). (American Samoa, however, by its own legislation has made the federal income tax laws applicable as its own mirror tax. American Samoa Code Annotated § 11.0403 (1981).) Consequently, ample precedent exists for allowing the Northern Mariana Islands and Guam to develop their own tax systems.

—compatibility with the Covenant. If the argument is accepted that section 602 of the Covenant allows the government of the Northern Mariana Islands to rebate 100 percent of taxes due, with no prior payment of those taxes, and allows elimination of the requirements for filing returns, local tax autonomy can be established consistently with the Covenant. If that argument is not accepted, amendment of the Covenant is necessary to eliminate the application of the federal income tax laws to the Northern Mariana Islands as a local territorial tax of the Northern Mariana Islands.

In the face of the congressional definition of "rebate" in section 3(b) of Public Law 98-213, 97 Stat. 1459 (1983), arguments for a more expansive definition of the term are likely to fail. Accordingly, if the Northern Mariana Islands is to have local tax autonomy, the Covenant must be amended or, at the very least, section 3(b) of Public Law 98-213 must be repealed or amended.

Other options. Local autonomy and mirror taxation (with either federal or local administration) are not the only possible relationships between the federal income tax laws and the tax laws of the Northern Mariana Islands.

—federal taxation, proceeds to the federal treasury. The Northern Mariana Islands could be considered as part of the United States for purposes of the federal income tax laws, so that persons and corporations in the Northern Mariana Islands would be treated just as are persons and corporations in, say, Missouri. All taxes would be paid into the federal treasury.

The objections to this possible relationship are several, and none of the territories or possessions of the United States is now treated in the same way as a State of the United States for purposes of the federal income tax laws. The principal objection derives from the United States Declaration of Independence. Any federal law imposing taxes on a territory or possession of the United States smacks of taxation without representation. The objection is attenuated if proceeds of the tax are turned over to the territory or possession, where they may be appropriated by the elected representatives of the local citizenry. If, however, proceeds go into the federal treasury, they are subject to appropriation by the United States Congress, in which citizens of territories and possessions have no vote.

Applying federal income tax laws to the Northern Mariana Islands as they are applied in the United States would not, of course, directly raise any revenue for the Northern Mariana Islands. The Northern Mariana Islands is (and most other territories are) already dependent to some extent on annual appropriations by the United States Congress. If federal income taxes collected in the Northern Mariana Islands could only be expended in the Northern Mariana Islands after appropriation by the Congress, the Northern Mariana Islands would be even less able to chart its course for more than one year at a time.

Amendment of the Covenant would be necessary to put this alternative in effect. The alternative would be less complex for both taxpayers and administrators than the mirror tax system, although taxpayers in the Northern Mariana Islands would still be subject to the complexity of the federal income tax laws. Loopholes caused by the juxtaposition of two separate tax systems would be eliminated.

This alternative, however, would rule out any local adjustment of the tax laws to meet special needs or changing circumstances in the Northern Mariana Islands. The alternative would also be unfair to the Northern Mariana Islands as long as other territories were allowed either to operate their own local systems of taxation or to receive mirror tax collections.

—federal taxation, proceeds to the Northern Mariana Islands. Treating the Northern Mariana Islands as part of the United States for purposes of the federal income tax laws, but turning over to the government of the Northern Mariana Islands all taxes collected on income derived from sources within the Northern Mariana Islands is also a possible alternative. President Carter, in his 1980 statement of "a comprehensive Federal territorial policy" proposed that this alternative be enacted into law for Guam, the Virgin Islands, American Samoa, and the Northern Mariana Islands. 1 Public Papers of the Presidents: Jimmy Carter 1980-81, at 317, 322 (1981). No such legislation, however, was enacted.

One such "unified" system of taxation is described by Karla Hoff in her U.S. Federal Tax Policy towards the Territories: Past, Present, and Future, 37 Tax Law Review 51, 94 (1981). She outlines a system under which the Northern Mariana Islands would receive (1) all federal income taxes paid by persons residing in the Northern Mariana Islands at the end of the year; (2) a prorated share of federal income taxes paid by persons not residing in the Northern Mariana Islands but with income from sources in the Northern Mariana Islands, based on the ratio of their income derived from sources in the Northern Mariana Islands to their total world-wide income; and (3) a prorated share of federal corporate income taxes, based on the ratio of income derived from sources in the Northern Mariana Islands to total income derived from sources in the Northern Mariana Islands or the United States. Certain high-income individuals not residing in the Northern Mariana Islands and all corporations would be required to provide the Internal Revenue Service with information categorizing their income by source, if they derived income from sources in the Northern Mariana Islands.

Implementation of this alternative would also require amendment of the Covenant. The complexities of the mirror tax system, although not of the federal income tax itself, would be avoided and loopholes caused by the juxtaposition of separate systems of taxation would be avoided. Ms. Hoff also suggests that, by comparison with the mirror tax, tax collections should increase and compliance problems decrease because the federal Internal Revenue Service is more efficient than territorial tax administrations. Id. at 95.

A principal disadvantage of the unified system is, again, that the Northern Mariana Islands would have no power to adjust the tax laws to meet special needs or changing circumstances in the Northern Mariana Islands. Because the Internal Revenue Service is interested in maximizing federal revenues, there is also the possibility that regulations promulgated by the Service to allocate a taxpayer's income between sources in the Northern Mariana Islands and sources in the United States could favor the Federal Government.

Subtitle B. Estate and Gift Taxes.

The statutes.

> The estate tax is levied on the amount of property transferred from one person to another by bequest. The gift tax is levied on the total amount of gifts made by any individual since 1932.
>
> The major purpose of taxing gifts and bequests is to reduce the inequality of the distribution of wealth . . . . Despite their advantages on social and economic grounds, estate and gift taxes amount to a small proportion of federal revenues.
>
> [Because of large exemptions allowed, it] is estimated that less than a quarter of the total wealth owned by those who die in any one year is subject to the estate and gift taxes.

G. Break & J. Pechman, Federal Tax Reform: The Impossible Dream? 110-11 (1975).

The estate tax and the gift tax were originally separate taxes. Since a person can reduce estate taxes by giving away property before death, the two taxes were integrated and made subject to the same rate schedule beginning in 1977. Public Law 94-455, §§ 2001(a)(1), 2001(b)(1), 90 Stat. 1520 (1976). See House Report 94-1380, at 10-15 (1976). The gross estate of a person thus includes not only all property owned at the time of death, but also all property given away before death (but after 1932). Consequently, the more that is paid out in taxes on gifts during the donor's lifetime, the less will be the tax on what is left at the donor's death. 26 U.S.C. §§ 2001(b), 2012.

Like the income tax, the estate and gift tax allows a variety of exclusions and deductions. Not counted as taxable gifts, for example, are gifts of $10,000 or less to any one person in one calendar year. Id. § 2503(b). In computing taxable gifts, a taxpayer is also allowed to deduct gifts to his or her spouse and gifts to certain charitable or benevolent organizations. Id. §§ 2522, 2523. In addition, the taxpayer is allowed, in his or her lifetime, a credit against tax due of $192,800. Id. §§ 2010(a), 2504(a).* The credit of $192,800 in effect exempts from gift and

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*The $192,800 credit will become effective for gifts made in 1987 and thereafter. Legislation enacted in 1981 increased the credit from its earlier level of $47,000 in incremental annual steps, so that the credit for gifts made in 1984, for example, is $96,300.

estate taxes cumulative transfers of $600,000. House Conference Report 97-215, at 247 (1981). In other words, if a person through taxable lifetime gifts and the passing of his or her taxable estate at death transferred $600,000 worth of property, the total tax but for the credit would be $192,800.

The marginal rate of tax paid on taxable gifts and estates is graduated, ranging from 18 percent on the first $10,000 of the total of the estate and all taxable gifts to 50 percent on any part of the total of the estate and all taxable gifts in excess of $2,500,000.*

Present applicability.

Article VI of the Covenant, dealing with revenue and taxation, makes no specific reference to the applicability of federal estate and gift taxes. Estate and gift taxes are not income taxes and, so, are neither imposed by section 601(a) of the Covenant nor subject to the rebate provisions of section 602 of that document. But subsection (c) of section 601 of the Covenant provides that "References in the Internal Revenue Code to Guam will be deemed also to refer to the Northern Mariana Islands, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof or of this Covenant."

The estate tax is imposed on "the transfer of the taxable estate of every decedent who is a citizen or resident of the United States." 26 U.S.C. § 2001(a). "United States" is defined, in section 7701(a)(9) of title 26 to exclude Guam. See also 26 C.F.R. § 20.0-1(b)(1) (1984). Section 2208 of title 26, however, provides:

> A decedent who was a citizen of the United States and a resident of a possession thereof at the time of his death shall, for purposes of the tax imposed by this chapter, be considered a "citizen" of the United States within the meaning of that term wherever used in this title unless he acquired his United States citizenship solely by reason of (1) his being a citizen of such possession of the United States, or (2) his birth or residence within such possession of the United States.

Section 2209 provides:

> A decedent who was a citizen of the United States and a resident of a possession thereof at the time of his death

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*The maximum marginal rate of 50 percent becomes effective for decedents dying and gifts made in 1988. From 1984 through 1987 the maximum marginal rate is 55 percent, that rate being applicable to any part of a total of the estate and all taxable gifts in excess of $3,000,000. 26 U.S.C. § 2001(c)(2)(D).

> shall, for purposes of the tax imposed by this chapter, be considered a "nonresident not a citizen of the United States" within the meaning of that term wherever used in this title, but only if such person acquired his United States citizenship solely by reason of (1) his being a citizen of such possession of the United States, or (2) his birth or residence within such possession of the United States.

Thus, "a United States citizen who moves from the United States to one of the possessions will continue to be treated for estate . . . tax purposes in the same manner in which he would have been treated if he had remained in the United States." Conference Report 2632 (1958), reprinted at 1958 U.S. Code Cong. & Ad. News 4791, 5053, 5077.

Guam is a possession of the United States. Consequently, under section 601(c) of the Covenant, residents of the Northern Mariana Islands are residents of a possession within the meaning of sections 2208 and 2209 of title 26. United States citizens currently residing in the Northern Mariana Islands are subject to the estate tax now. Other persons currently residing in the Northern Mariana Islands are not subject to the estate tax now. Those residents of the Northern Mariana Islands who become United States citizens solely through operation of Article III of the Covenant will be classified as "nonresidents not citizens of the United States" for estate tax purposes.* As such, only that part of their estate within the United States (defined not to include the Northern Mariana Islands) will be subject to the estate tax. See 26 U.S.C. § 2103. For United States citizens, in general, "gross estate" is defined, for purposes of computing the tax, as including "all property . . . , wherever situated." 26 U.S.C. § 2031(a) (emphasis added).

Section 2501(a)(1) of title 26 imposes a tax on transfers of property by gift by any individual, resident or nonresident. Generally excepted from this tax, however, are transfers of intangible property "by a nonresident not a citizen of the United States." 26 U.S.C. § 2501(a)(2). Also excepted are transfers by a nonresident not a citizen of the United States of property outside the United States. 26 U.S.C. § 2511. Provisions similar to those of the estate tax, above, classify residents of the Northern Mariana

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*Distinguishing, for purposes of determining tax liability, residents of the Northern Mariana Islands who become United States citizens by operation of article III of the Covenant and those who are United States citizens by reason of birth or individual naturalization may be constitutionally invalid. See Flores v. Government of Guam, 444 F. 2d 284, 288 n.8 (9th Cir. 1971).

Islands who became citizens of the United States solely through operation of the Covenant as "nonresidents not citizens of the United States" for purposes of the gift tax. Id. § 2501(c). Residents of the Northern Mariana Islands who are or who become United States citizens by another means are United States citizens for purposes of the gift tax.

Estate and gift taxes levied on inhabitants of the Northern Mariana Islands are among the taxes to be paid by the United States into the treasury of the Northern Mariana Islands. Covenant § 703(b).

Discussion.

Who is entitled to treatment as a "nonresident not a citizen of the United States" for gift and estate tax purposes--acquisition of United States citizenship solely by status as citizen of the Northern Mariana Islands or by birth or residence in the Northern Mariana Islands. The favorable treatment, for purposes of federal taxation of gifts and estates, afforded to a "nonresident not a citizen of the United States" is clearly available to each citizen of the Northern Mariana Islands who becomes a citizen of the United States by operation of section 301 of the Covenant.

Favorable treatment for purposes of federal taxation of gifts and estates will probably also be available for the descendants of persons who become citizens of the United States under section 301. Although that treatment is not so clearly mandated, support for it may be found in a regulation of the United States Internal Revenue Service.

An apparently key word in sections 2208, 2209, and 2501(c) of title 26 is "solely." Residents of the Northern Mariana Islands entitled to the favorable treatment given "nonresidents not citizens of the United States" are only those citizens of the United States who acquire citizenship solely by reason of being a citizen of the Northern Mariana Islands (that is, by operation of section 301 of the Covenant) or by birth in the Northern Mariana Islands (by operation of section 303 of the Covenant).*

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*Residence in the Northern Mariana Islands, under the Covenant, provides no independent basis for acquisition of United States citizenship, since such residence is not residence in the United States for purposes of United States naturalization laws. Covenant § 503(a).

The children of many, if not most, citizens of the Northern Mariana Islands who become citizens of the United States by operation of section 301 of the Covenant will themselves be citizens of the United States by reason of their birth in the Northern Mariana Islands under section 303 of the Covenant. Their birth in the Northern Mariana Islands will not, however, be the sole reason for their acquisition of United States citizenship. They will also be United States citizens because their parents are United States citizens. In most instances, a child of a United States citizen, wherever the child is born, is a citizen of the United States. 8 U.S.C. § 1401(c),(d),(g). Consequently, that child, if born in the Northern Mariana Islands, is not a United States citizen solely by reason of birth in the Northern Mariana Islands; the child also derives United States citizenship from the parent's (or parents') United States citizenship. Since birth in the Northern Mariana Islands is not the sole reason for the child's United States citizenship, the child would appear not to be entitled to favorable treatment as a "nonresident not a citizen of the United States" for purposes of federal gift and estate taxation.*

Collectively, the net effect of this interpretation is to allow favorable treatment under federal gift and estate tax laws for only that generation in the Northern Mariana Islands that becomes citizens of the United States by operation of section 301 of the Covenant, and not for the descendants of that generation. (Favorable treatment would also be available to persons born in the Northern Mariana Islands of alien parents.)

The Internal Revenue Service, in an example accompanying regulations implementing the statute providing favorable gift and estate tax treatment for certain residents of possessions of the United States, takes the position that an individual born in a possession of United States citizen parents is a United States citizen solely by reason of birth in that possession. 26 C.F.R. § 20.2209-1, example (2) (1984).

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*A child born outside the Northern Mariana Islands to parents who had become United States citizens by operation of section 501 of the Covenant could not, of course, claim birth in the Northern Mariana Islands as a basis for United States citizenship. Such a child would appear unable to claim entitlement to favorable treatment as a "nonresident not a citizen of the United States" for purposes of federal gift and estate taxation. In fact, however, even this child may be able to receive that treatment. See the discussion in the text, below.

Some support for the Internal Revenue Service's reading of the statutes and the meaning given "solely" may be found in the legislative history of section 2208. Prior to enactment of section 2208, United States citizens residing in the possessions were not subject to the federal estate or gift taxes. Fairchild v. Commissioner, 24 T.C. 408 (1955). Section 2208 was enacted so that "United States citizens who are residents of the possessions and who acquired their United States citizenship completely independently of their connections with the possessions [would] have their estates taxed in the same manner as citizens of the United States are taxed." Conference Report 2632, 85th Cong., 2d Sess. (1958), reprinted in 1958 U.S. Code Cong. & Ad. News 4791, 5053, 5077-78 (emphasis added). The child of parents who become United States citizens by operation of section 301 of the Covenant cannot be said to have acquired United States citizenship "completely independently" of his or her connections with the Northern Mariana Islands, since one basis for the child's United States citizenship is the acquisition of United States citizenship by the parents under section 301.

Who is entitled to treatment as a "nonresident not a citizen of the United States" for gift and estate tax purposes--acquisition of United States citizenship by reason of birth or residence in another possession. By a literal reading of the pertinent statutes, residents of the Northern Mariana Islands who become United States citizens by virtue of their birth or residence on Guam would be classified as "United States citizens" for purposes of both the estate and gift taxes. To achieve the favored status of a "nonresident not a citizen of the United States," residence in the same possession as that in which citizenship was acquired would appear to be required. 26 U.S.C. §§ 2209, 2501(c). Similarly, Northern Mariana Islands citizens who become United States citizens by operation of the Covenant but who reside in Guam (or another possession, for example, the Virgin Islands), would also not appear to qualify as "nonresidents not citizens of the United States." Such a result seems unintended. If a citizen of the Northern Mariana Islands residing in the Northern Mariana Islands is exempted from estate and gift taxes and a citizen of Guam residing on Guam is similarly exempted, no rationale justifies imposing the taxes on the citizen of the Northern Mariana Islands residing on Guam or the citizen of Guam residing in the Northern Mariana Islands. That conclusion has been reached by the Internal Revenue Service, which found that "[t]here is no indication of a Congressional intent to distinguish between possession citizens who were residents of the same possession at the time of their death as that through which they acquired citizenship, and those who were not." Revenue Ruling 74-25, 1974-1 C.B. 284, 285.

Subtitle C. Employment Taxes.

Subtitle C of the Internal Revenue Code imposes taxes on employment to support the social security system (the Federal Insurance Contributions Act) and the railroad employees retirement system (the Railroad Retirement Tax Act), and to provide federal support for State unemployment compensation programs (the Federal Unemployment Tax Act). Subtitle C also contains provisions requiring employers to withhold income taxes from the wages of employees and to pay the withheld taxes to the federal treasury.

These employment taxes and their present applicability to the Northern Mariana Islands are discussed below.

The Federal Insurance Contributions Act

The statute.

The Federal Insurance Contributions Act, 26 U.S.C. §§ 3101 et seq., imposes wage-based taxes on employers and employees to support the federal old age, survivors, disability, and health insurance program, more commonly known as social security (which includes the medicare program). The employer and employee are each required to pay 5.7 percent* of the employee's wages not in excess of the "contribution and benefit base" for old-age, survivors, and disability insurance. Id. §§ 3101(a), 3111(a), 3121(a). That base, which is adjusted annually as necessary to reflect cost-of-living increases in benefits paid, is $37,800 for 1984. 48 Fed. Reg. 50414 (1983). Thus, in 1984, the employer and employee are each required to pay taxes equal to 5.7 percent of the employee's wages up to $37,800. In addition, the employer and employee are each required to pay an amount equal to 1.3 percent** of the employee's wages not in excess of the contribution and benefit base for hospital insurance (medicare). 26 U.S.C. §§ 3101(b), 3111(b).

The employer is required to withhold the social security tax on the employee from the employee's wages. 26 U.S.C. § 3102(a).

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*In 1988 the percentage increases to 6.06 and in 1990 to 6.2. 26 U.S.C. §§ 3101(a), 3111(a).

**In 1985, this will increase to 1.35 percent and, in 1986, to 1.45 percent. 26 U.S.C. §§ 3101(b), 3111(b).

Self-employed persons are also obliged to contribute to the social security system through a tax on self-employment income. 26 U.S.C. §§ 1401 et seq. The self-employment tax is greater than the tax on employees, but not as large as the total of the taxes imposed on employer and employee. Id. § 1401.

Present applicability.

Section 606(b) of the Covenant provides:

> Those laws of the United States which impose excise and self-employment taxes to support or which provide benefits from the United States Social Security System will upon termination of the Trusteeship Agreement or such earlier date as may be agreed to by the Government of the Northern Mariana Islands and the Government of the United States become applicable to the Northern Mariana Islands as they apply to Guam.

Section 703(b) of the Covenant in general provides for the return of federal taxes derived from the Northern Mariana Islands to the government of the Northern Mariana Islands. Excepted, however, are taxes collected under "Chapters 2 or 21 of Title 26, United States Code." Chapter 2 is the tax on self-employment income while chapter 21 is the Federal Insurance Contributions Act.

Residents of Guam also pay the tax on self-employment income, 26 U.S.C. § 1402(b), and the taxes imposed by the Federal Insurance Contributions Act, id. § 3121(e).

At the time these taxes become effective, the social security system of the Northern Mariana Islands is merged into the federal system, and persons in the Northern Mariana Islands become eligible for federal social security benefits based on their contributions into either the Northern Mariana Islands or the federal system.* Covenant § 606(c).

The Railroad Retirement Tax Act

The statute.

The Railroad Retirement Tax Act, 26 U.S.C. §§ 3201 et seq., imposes taxes based on wages on railroads and their employees to support programs similar to social security to protect railroad workers and their families from loss of income resulting from

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*Contributions into the Trust Territory Social Security Retirement Fund are also considered in determining eligibility. Covenant § 606(c).

retirement, death, disability, unemployment, or sickness. Railroads and their employees pay these taxes instead of the taxes imposed by the Federal Insurance Contributions Act, above. 26 U.S.C. § 3121(b)(9).

Present applicability.

The Railroad Retirement Tax Act applies to railroads subject to the jurisdiction of the Interstate Commerce Commission and their employees. 26 U.S.C. § 3231(g). The Commission's jurisdiction now extends to transportation between various points and Guam, but only to the extent the transportation is within the United States. 49 U.S.C. § 10501(b). "United States" is defined to exclude both Guam and the Northern Mariana Islands. Id. § 10102(26). Accordingly, railroads in the Northern Mariana Islands are not subject to the jurisdiction of the Interstate Commerce Commission and they and their employees are not subject to the Railroad Retirement Tax Act.

At present, the question of the applicability of the Railroad Retirement Tax Act to the Northern Mariana Islands is entirely academic, since there are no operating railroads in the Northern Mariana Islands. (During the Japanese administration of the Northern Mariana Islands, however, narrow-gauge railroads were extensively used to transport harvested sugar cane.)

The Federal Unemployment Tax Act

The statute.

The Federal Unemployment Tax Act, 26 U.S.C. §§ 3301 et seq., imposes a tax on employers equal to 3.2 percent* of the first $7,000 in wages of each of his or her employees. 26 U.S.C. §§ 3301, 3306(b)(1). The employer is granted a credit against this tax for required payments into a State unemployment compensation fund, but the credit may not exceed 90 percent of the employer's federal unemployment tax obligation. Id. § 3302.

The proceeds of the federal unemployment tax support the federal-State unemployment compensation program. Under that program, unemployment insurance benefits are paid to unemployed workers

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*The percentage is 3.5 in years in which congressional appropriations to the federal extended unemployment compensation fund have been exhausted. 26 U.S.C. § 3301(1); 42 U.S.C. § 1105. (After December 31, 1984, the percentages will rise to 6.0 and 6.2 respectively. 26 U.S.C. § 3301 note.)

pursuant to State compensation laws approved by the United States Department of Labor.

> The unemployment insurance program is a cooperative venture between the states and the federal government, and as such, neither exercises total control over its financial health.
>
> States set and collect unemployment taxes from employers and deposit the funds into a state account in the federal unemployment trust fund. The states then draw on these funds to pay benefits.
>
> Generally, it is up to the state to determine the extent of the unemployment tax it imposes and the benefits it pays. As a result, both differ greatly around the country. State taxes range from an average of about 2.7 percent in most states up to a maximum of 9 percent in Michigan.
>
> Average weekly benefits range from $55 in Puerto Rico to $130 in Illinois. Duration of state benefits also differs, but benefits generally last around 26 weeks.

Budget Crisis Dims Outlook for Greater Jobless Benefits; 3 Million Workers Face Cuts, 40 Congressional Quarterly Weekly Report 1031, 1034 (1981).

> Federal unemployment taxes
>
> are used to pay administrative costs for the entire [unemployment insurance] program, to fund job placement services, to share 50-50 with states the cost of the 13 weeks in extended benefits and to provide loans to states whose accounts fall short.

Id.

Present applicability.

The Federal Unemployment Tax Act does not apply to Guam. 26 U.S.C. § 3306(c), (j). Accordingly, it is not applicable to the Northern Mariana Islands by operation of sections 502(a)(2) or 601 of the Covenant. The negotiating history of section 601 confirms this conclusion:

> The revenue provisions of the Covenant are not designed to render the Federal Unemployment Tax and the benefits derived therefrom applicable to the Northern Mariana Islands.

Report of the Joint Drafting Committee on the Negotiating History of the Covenant, at C-3 (1975), reprinted at Hearings before the Subcommittee on Territorial and Insular Affairs of the House Committee on Interior and Insular Affairs on H.J. Res. 549 et al. to Approve the "Covenant to Establish a Commonwealth of the Northern Mariana Islands," 94th Cong., 1st Sess. 374, 376 (1975). And:

> Section 601 of the Covenant does not make the federal unemployment tax or benefits derived therefrom applicable to the Northern Marianas. These laws are not applicable to Guam either. It appears preferable for the Northern Marianas to provide its own unemployment benefits and an appropriate level of taxation to support those benefits, rather than to participate in the federal unemployment tax system and be subject to its high tax rates.

Marianas Political Status Commission, Section by Section Analysis of the Covenant 70 (1975).*

Collection of Income Tax at Source on Wages

The provisions for withholding of income taxes on wages by employers are an integral part of federal income tax collection, discussed under the heading, Subtitle A. The Income Tax, above. These provisions are not further discussed here.

Subtitle D. Miscellaneous Excise Taxes.

and

Subtitle E. Alcohol, Tobacco, and Certain Other Excise Taxes.

The statutes.

An excise tax is a tax levied on the manufacture, sale, or consumption of particular goods.

The Federal Government derives most of its

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*The Analysis is reprinted in Hearings on the Covenant to Establish the Commonwealth of the Northern Mariana Islands before the Subcommittee on Territorial and Insular Affairs of the House Committee on Interior and Insular Affairs, 94th Cong., 1st Sess. 626 (1975) and in Hearings on the Northern Mariana Islands before the Senate Committee on Interior and Insular Affairs, 94th Cong., 1st Sess. 356 (1975).

> consumption tax revenue from excise taxes on commodities or services that are considered socially and morally undesirable--for example, excises on the consumption of liquor and tobacco. The rationale for the sumptuary taxes is that use by consumers of the products on which the taxes are levied creates additional costs to society that are not borne by the producers and are not reflected in the prices they charge. . . . The excise tax raises the price of the commodity, thus discouraging consumption and at the same time imposing a charge on the people who are likely to create social problems.
>
> Another type of excise tax is one whose proceeds are used to pay for particular services provided by government to consumers. The best example of such a tax is the gasoline tax, whose revenues have paid for the federal highway trust fund since its enactment in 1956. . . .
>
> Selective excise taxes are used heavily during wartime to discourage the consumption of items that are manufactured with strategic materials or are scarce for other reasons.

G. Break & J. Pechman, Federal Tax Reform: The Impossible Dream? 116-17 (1975).

The Internal Revenue Code imposes excise taxes on gasoline and other petroleum fuels, 26 U.S.C. §§ 4041 et seq., 4081 et seq.; motor vehicles and other automotive products, id. §§ 4061 et seq.; coal, id. § 4121; recreational fishing and archery equipment, id. § 4161; firearms, id. §§ 4181 et seq.; telephone and teletype communications, id. §§ 4251 et seq.; air transportation, id. § 4261 et seq.; insurance policies issued by foreign insurance firms, id. § 4371; bookmaking, lotteries, and other gambling transactions, id. §§ 4401 et seq.; the use of trucks, id. §§ 4481 et seq.; and the removal of hard mineral resources from the deep seabed, id. §§ 4495 et seq.

"Environmental taxes" are imposed on crude oil and imported petroleum products, id. §§ 4611 et seq.; various chemicals, id. §§ 4661 et seq.; and hazardous waste, id. §§ 4681 et seq.

Other excise taxes are imposed to regulate the activities of public charities, id. § 4911; private foundations and black lung benefit trusts, id. §§ 4940 et seq.; pension plans, id. §§ 4971 et seq.; and real estate investment trusts, id. § 4981.

Windfall profits of crude oil producers due to the deregulation of oil prices are subject to a windfall profits tax. Id. §§ 4986 et seq.

Excise taxes are also imposed on distilled spirits, wine, and beer, id. §§ 5001 et seq.; on cigarettes and other tobacco products, id. §§ 5701 et seq.; and on machine guns, destructive devices, and certain other firearms, id. §§ 5801 et seq.

In fiscal year 1983, the excise taxes that produced the largest federal revenues were the windfall profits tax on oil producers ($12,999 million); alcohol taxes ($5,557 million); the gasoline tax ($6,140 million); and tobacco taxes ($4,136 million). U.S. Office of Management & Budget, Budget of the U.S. Government: Fiscal Year 1985, at 9-19 to 9-20 (1984).

Present applicability.

In general. Section 604(a) of the Covenant allows the United States to "levy excise taxes on goods manufactured, sold or used or services rendered in the Northern Mariana Islands in the same manner and to the same extent as such taxes are applicable within Guam." The Marianas Political Status Commission noted that this section

> assures that there will be no discrimination between Guam and the Northern Mariana Islands. The proceeds of such taxes will be turned over by the federal government to the Northern Marianas Government in any event under Section 703(b) and, under Section 602(a), can be rebated if the local government wishes. Thus, there are significant protections against the imposition of excise taxes which might otherwise interfere with economic development.

Marianas Political Status Commission, Section by Section Analysis of the Covenant 76-77 (1975).*

The "United States" is defined, for purposes of the entire Internal Revenue Code, to include only the several States and the District of Columbia. 26 U.S.C. § 7701(9). The excise taxes imposed by the Code are applicable in Guam and the Northern Mariana Islands, then, only if made specifically applicable by the terms of the particular tax. With a few exceptions, noted below, none of the

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*The Analysis is reprinted in Hearings on the Covenant to Establish the Commonwealth of the Northern Mariana Islands before the Subcommittee on Territorial and Insular Affairs of the House Committee on Interior and Insular Affairs, 94th Cong., 1st Sess. 626 (1975) and in Hearings on the Northern Mariana Islands before the Senate Committee on Interior and Insular Affairs, 94th Cong., 1st Sess. 356 (1975).

excise taxes are applicable to Guam or the Northern Mariana Islands.

Environmental excise taxes. "United States" is defined to include the Northern Mariana Islands for purposes of the environmental tax on crude oil received at a United States refinery or petroleum products entered into the United States for consumption, use, or warehousing. 26 U.S.C. § 4612(a)(4)(A). The tax, which is $.0079 per barrel,* would thus apply to crude oil or petroleum products brought into the Northern Mariana Islands from any place other than the United States.

The "United States" is also defined to include the Northern Mariana Islands for purposes of the environmental tax on certain chemicals manufactured or produced in, or entered into, the United States. Id. § 4662(a)(2).

The environmental tax on hazardous waste is imposed "on the receipt of hazardous waste at a qualified hazardous waste disposal facility." Id. § 4681(a). "Hazardous waste" and "qualified hazardous waste disposal facility" are defined by reference to the Solid Waste Disposal Act. Id. § 4682(a). That Act defines "State" to include the Northern Mariana Islands. 42 U.S.C. § 6903(31). Accordingly, owners or operators of qualified hazardous waste disposal facilities in the Northern Mariana Islands are subject to the tax on hazardous waste.

The environmental taxes on crude oil and petroleum products and on chemicals are imposed to help finance the Hazardous Substance Response Trust Fund, commonly known as "the Superfund." 42 U.S.C. § 9631(b)(1)(A). The Trust Fund in turn finances environmental cleanup.

Section 703(b) of the Covenant provides, in part, that:

> There will be paid into the Treasury of the Government of the Northern Mariana Islands, to be expended to the benefit of the people thereof as that Government may by law prescribe, . . . the proceeds of all taxes collected under the internal revenue laws of the United States on articles produced in the Northern Mariana Islands and transported to the United States, its territories or possessions, or consumed in the Northern Mariana Islands, [and] the proceeds of any other taxes which may be levied by the Congress on the inhabitants of the Northern Mariana Islands . . . .

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*One barrel equals 42 United States gallons. 26 U.S.C. § 4612(a)(8).

There is consequently room for doubt as to whether federal taxes collected on crude oil and petroleum products brought into the Northern Mariana Islands and on chemicals sold in the Northern Mariana Islands should be turned over to the Northern Mariana Islands or paid into the Hazardous Substance Response Trust Fund.

The question is complicated by the presence of specific provisions removing any possible doubt as to the disposition of taxes collected in Puerto Rico and the Virgin Islands, and the absence of similar provisions addressing the disposition of taxes collected in the Northern Mariana Islands or Guam. Section 7652(a)(3) of title 26 requires federal taxes "on articles produced in Puerto Rico and transported to the United States . . ., or consumed in the island" to be turned over to the government of Puerto Rico. Section 7652(b)(3) of title 26 requires turnover to the government of the Virgin Islands of federal taxes on "articles produced in the Virgin Islands and transported to the United States." The environmental taxes on crude oil and petroleum products and on chemicals are specifically exempted from these turnover provisions. 26 U.S.C. §§ 4612(c), 4662(e). No similar exemption is made for the turnover provisions of section 703(b) of the Covenant or section 30 of Guam's Organic Act, 48 U.S.C. § 1421h. Under normal rules of statutory construction, the omission must be considered as deliberate, particularly since the United States is defined specifically in the same sections to include "the Commonwealth of the Northern Mariana Islands." 26 U.S.C. §§ 4612(a)(4)(A), 4662(a)(2).*

The Post-closure Liability Trust Fund is used to cover monitoring, maintenance, and other liabilities of hazardous waste dumps after those dumps have been closed. 42 U.S.C. §§ 9607(k),

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*The environmental taxes were enacted as part of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, Public Law 96-510, 94 Stat. 2767. Nothing in the legislative history of that act explains why Puerto Rico and the Virgin Islands were treated one way and Guam and the Northern Mariana Islands another. The lack of explanation is due in part to the fact that specific mention of the Puerto Rico and Virgin Islands tax turnover provisions first appeared in a compromise bill offered as a substitute for bills reported out of the House and Senate committees. See 126 Congressional Record 30926-27 (the substitute bill), 30930 (remarks of Senator Randolph). See generally Congress Clears 'Superfund' Legislation, 36 Congressional Quarterly Almanac 584, 592-93 (1980).

9611(j), 9641(b). The environmental tax on hazardous waste is less closely linked to this trust fund than are the other environmental taxes to the Hazardous Substance Response Trust Fund. See 26 U.S.C. § 4682(d); 42 U.S.C. §§ 9641, 9651(2). No specific provisions address the disposition of hazardous waste taxes collected in any of the jurisdictions in which federal taxes are commonly turned over to the government of that jurisdiction. Accordingly, whether federal hazardous waste taxes collected in the Northern Mariana Islands should go to the Post-closure Liability Trust Fund or, under section 703(b) of the Covenant, to the government of the Northern Mariana Islands is debatable.

Insurance policies issued by foreign insurance firms. The excise tax on insurance policies issued by foreign insurers applies only to policies issued against risks in the United States. 26 U.S.C. § 4372(d). Since the Northern Mariana Islands is not within the United States, pursuant to the definition of "United States" applicable to the entire Internal Revenue Code, policies issued against risks in the Northern Mariana Islands are not subject to the tax. Policies issued by insurance firms in the Northern Mariana Islands against risks in any of the fifty States or the District of Columbia are subject to the tax.

Charities, private foundations, and trusts. The excise taxes used to regulate the activities of public charities, private foundations, black lung benefit trusts, pension plans, and real estate investment trusts are generally not applicable to such organizations in the Northern Mariana Islands. These excise taxes are used to prevent such organizations from abusing their preferred status under the federal income tax laws.

In the Northern Mariana Islands, these organizations will enjoy a preferred status under the federal income tax laws applied as a local territorial income tax. They will not, however, be subject to the excise taxes used to prevent abuse of their preferred status unless the Northern Mariana Islands enacts local legislation imposing such taxes.

Private foundations in the Northern Mariana Islands, since the Northern Mariana Islands is not part of the United States for purposes of the Internal Revenue Code, are subject to a special federal tax imposed on income derived from sources within the United States by foreign private foundations. 26 U.S.C. § 4948.

Windfall oil profits. The windfall profits tax is imposed on domestic crude oil. 26 U.S.C. §§ 4986(a), 4991(a). Domestic crude

oil includes oil produced from oil wells in possessions of the United States. Id. § 4996(b)(3). Guam is a possession, so by operation of section 601(c) of the Covenant, oil produced from wells in the Northern Mariana Islands is subject to the tax. Under section 703(b) of the Covenant, any windfall profits taxes collected by the United States on oil produced in the Northern Mariana Islands are paid to the treasury of the Northern Mariana Islands. (There are no oil wells in the Northern Mariana Islands at this time.)

Federal excise taxes on goods shipped from the United States to the Northern Mariana Islands. Goods shipped from the United States to Guam are "exempted from the payment of any tax imposed by the internal revenue laws of the United States." 26 U.S.C. § 7653(b). By operation of section 601(c) of the Covenant, goods shipped from the United States to the Northern Mariana Islands are also exempted from taxation. See Senate Report 94-433, The Covenant to Establish a Commonwealth of the Northern Mariana Islands 65, 80 (1975).

Goods entering Puerto Rico and the Virgin Islands from the United States are subject to a federal tax equal to any local tax on similar goods of local manufacture. 26 U.S.C. § 7653(a). This federal tax is paid into the treasuries of those jurisdictions. Id. § 7652(a)(3); 48 U.S.C. § 1642; Puerto Rico v. Blumenthal, 642 F.2d 622, 631-32 (D.C. Cir. 1980), certiorari denied, 451 U.S. 983 (1981). No similar tax is imposed on goods from the United States entering the Northern Mariana Islands, Guam, or American Samoa. The Northern Mariana Islands, however, has the authority to impose its own excise taxes on goods manufactured, sold, or used in or imported into the Northern Mariana Islands. Covenant § 604(b).

When federal excise taxes are paid at the time a product is manufactured, statutes may allow a "drawback" or refund of the taxes paid if the product is subsequently exported. See, for example, 26 U.S.C. § 5706; 27 C.F.R. §§ 290.221 (1984) (drawback of excise tax on tobacco products). When goods are shipped from the United States to Guam, drawbacks of federal excise taxes paid on those goods are allowed in the same manner as if Guam were a foreign country. 26 U.S.C. § 7653(c). By operation of section 601(c) of the Covenant, when goods are shipped from the United States to the Northern Mariana Islands, drawbacks of federal excise taxes paid are allowed in the same manner as if the Northern Mariana Islands were a foreign country.

Federal excise taxes on goods shipped from the Northern Mariana Islands to the United States. Excise taxes imposed on the production or manufacture of particular goods in the United States are also imposed on the importation of those goods into the United States.

See, for example, 26 U.S.C. §§ 5001 (distilled spirits), 5701 (tobacco products). The Northern Mariana Islands is not only outside the United States for purposes of the Internal Revenue Code, but is also outside the customs territory of the United States. Covenant § 603(a); Revised Tariff Schedules of the United States, General Headnote 2. Consequently, when goods from the Northern Mariana Islands cross the border into the United States, they become subject to federal excise taxes collected on the importation of those goods.

Section 703(b) of the Covenant requires the Federal Government to turn over to the government of the Northern Mariana Islands "the proceeds of all taxes collected on articles produced in the Northern Mariana Islands and transported to the United States, its territories or possessions." Under section 602 of the Covenant, the government of the Northern Mariana Islands may in turn rebate these taxes to the taxpayer.

Language virtually identical to that in section 703(b) of the Covenant in the organic legislation for Puerto Rico and the Virgin Islands was construed in Puerto Rico v. Blumenthal, 642 F.2d 622 (D.C. Cir. 1980), certiorari denied, 451 U.S. 983 (1981). The court, relying on the legislative history and administrative construction of the Puerto Rico and Virgin Islands provisions, held that not all excise taxes but only "equalization" taxes collected by the United States on articles produced in those islands and transported to the United States are to be paid over to the governments of Puerto Rico and the Virgin Islands. Id. at 626. The equalization taxes, levied by section 7652(a)(1) (Puerto Rico) and (b)(1) (Virgin Islands) of title 26, are taxes imposed on articles manufactured in those islands and shipped into the United States. Equal in amount to taxes imposed on similar articles manufactured in the United States, equalization taxes are intended to prevent island manufacturers from having an unfair competitive advantage in selling their goods within the United States. That advantage would arise, in the absence of an equalization tax, because products of the islands are generally exempt from federal taxes, including federal excise taxes on manufactures.

Despite the close similarity of the language at issue in the Puerto Rico and Virgin Islands cases, those cases should not be read as limiting federal excise taxes payable to the Northern Mariana Islands under section 703(b) of the Covenant only to equalization taxes. At no time from negotiation of the Covenant to the present has any federal equalization tax been imposed on articles manufactured in the Northern Mariana Islands and transported to the United States. Because the Northern Mariana Islands is outside the customs territory of the United States and goods exported from the

Northern Mariana Islands are subject to excise taxes on their importation into the United States, no equalization tax would ever be necessary to prevent manufacturers in the Northern Mariana Islands from obtaining an excise-tax advantage over their competitors in the United States. Accordingly, section 703(b), requiring payment to the Northern Mariana Islands of "the proceeds of all taxes collected under the internal revenue laws of the United States on articles produced in the Northern Mariana Islands and transported to the United States, its territories or possessions," would be meaningless if read as limited only to equalization taxes.

The same result may be reached by defining equalization taxes to include not just taxes levied by statutes such as section 7652(a)(1) and (b)(1), but any tax imposed on goods as a condition of entry into the United States in order to protect mainland manufacturers of competing goods required to pay a similar tax on, say, the manufacture of those goods. Any excise tax imposed on importation of such goods would be an equalization tax under this definition and, as such, would be payable after collection to the government of the Northern Mariana Islands.

The Puerto Rico and Virgin Islands cases do foreclose payment to the Northern Mariana Islands of federal taxes collected after goods from the Northern Mariana Islands have entered the customs territory of the United States, for example, a tax collected at the point of sale. See Puerto Rico v. Blumenthal, 642 F.2d at 639-40. Excise taxes collected on goods upon entry into the United States from the Northern Mariana Islands, however, should be paid to the Northern Mariana Islands.

Subtitle F. Procedure and Administration.

Subtitle F of the Internal Revenue Code contains a wide variety of provisions governing the collection, enforcement, and administration of federal taxes. To the extent a particular tax is applicable in the Northern Mariana Islands, these provisions govern the collection, enforcement, and administration of that tax. The federal income tax, applied as a local territorial tax of the Northern Mariana Islands, is collected, enforced, and administered as provided in this subtitle, except that the government of the Northern Mariana Islands acts in the place of the Federal Government. See the discussion, Subtitle A. The Income Tax, above.

Subtitle G. The Joint Committee on Taxation.

Subtitle G of the Internal Revenue Code establishes in the United States Congress the Joint Committee on Taxation, charged with oversight over the operation, effects, and administration of the Internal Revenue Code.

Subtitle H. Financing of Presidential Campaigns.

Section 6096 of the Internal Revenue Code allows a taxpayer to earmark one dollar of income taxes owed to be paid into the Presidential Election Campaign Fund. Subtitle H of the Code provides the mechanism for distributing funds collected in this manner among candidates for the presidency of the United States.

Subtitle I. Trust Fund Code.

Subtitle I of the Internal Revenue Code establishes internal housekeeping rules for the Black Lung Disability Trust fund, the Airport and Airway Trust Fund, and the Highway Trust Fund. Each of these funds receives all proceeds from specific federal taxes and other designated federal receipts. Each of the funds is used to finance specified federal programs, authorized under other titles of the United States Code.

TITLE 27. INTOXICATING LIQUORS.

The Commission did not examine this title of the United States Code in detail. No problems in the application of this title to the Northern Mariana Islands were brought to the Commission's attention.

TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE.

The Commission's staff examined title 28 in its entirety, but did not compile and edit its research for inclusion in this report. The application of title 28 to the United States District Court for the Northern Mariana Islands is governed by sections 1694-1694e of title 48 of the United States Code. See also Covenant §§ 401-403.

No significant problems in the application of title 28 to the Northern Mariana Islands were uncovered by the staff's research or otherwise brought to the Commission's attention.

TITLE 29. LABOR.

Chapter 4B of title 29, containing the Wagner-Peyser Act, is discussed below. The Commission's staff examined the other chapters in title 29, but did not compile and edit its research for inclusion in this report.

The Commission was asked to recommend to Congress that the National Labor Relations Act, chapter 7 of title 29, not apply to the Northern Mariana Islands, but declined to make such a recommendation.

Section 503(c) of the Covenant provides that the federal minimum wage law, contained in chapter 8 of title 29, shall be inapplicable to the Northern Mariana Islands "except in the manner and to the extent made applicable . . . by the Congress by law after termination of the Trusteeship Agreement." The activities in the Northern Mariana Islands of the United States and its contractors are, however, subject to federal laws governing "the conditions of employment, including the wages and hours of employees." Covenant § 502(b).

Chapter 4B. Federal Employment Service.

The statute.

The Wagner-Peyser Act, codified in this chapter, establishes the United States Employment Service. The Act was succinctly described in a recent Supreme Court opinion:

> The Wagner-Peyser Act was passed in 1933 in order to deal with the massive problem of unemployment resulting from the Depression. The Act establishes the United States Employment Service within the Department of Labor "[i]n order to promote the establishment and maintenance of a national system of public employment offices." 29 U.S.C. § 49. State agencies, which have been approved by the Secretary of Labor, are authorized to participate in the nationwide employment service. Id., at § 49g. The Secretary is authorized to make "such rules and regulations as may be necessary" to accomplish the ends of the Act. Id., at § 49k. Federal regulations issued pursuant to that authority have established an interstate clearance system to provide employers a means of recruiting nonlocal workers, when the supply of local workers is inadequate. 20 C.F.R. § 602.2(c) (1981). If local workers are not available, a "clearance order" is sent through the Employment and Training Administration of the Department of Labor to other state agencies in order to give them an opportunity to meet the request.

Alfred L. Snapp & Son, Inc. v. Puerto Rico, 458 U.S. 592, 594-95 (1982) (footnote omitted).

The Immigration and Nationality Act of 1952 allows the admission of temporary foreign workers into the United States only if "unemployed persons capable of performing such service or labor cannot be found in this country." 8 U.S.C. § 1101(a)(15)(H)(ii). The nationwide employment service established by the Wagner-Peyser Act determines whether qualified unemployed persons can be found within the United States. Again as described by the Supreme Court in the Snapp case:

> The Attorney General is charged with determining whether entry of foreign workers would meet this standard, "upon the petition of the importing employer." 8 U.S.C. § 1184(c). He is to make this determination "after consultation with appropriate agencies of the Government." Ibid. The Attorney General has delegated this responsibility to the Commissioner of Immigration and Naturalization, 8 C.F.R. § 2.1 (1981), who, in turn, relies on the Secretary of Labor for the initial determinations. 8 C.F.R. § 214.2(h)(3) (1981). To meet this responsibility, the Secretary of Labor relies upon the employment referral system established under the Wagner-Peyser Act.
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> . . . The employer who anticipates a need for foreign laborers must file an application with the local public employment office, including a copy of the job offer. 20 C.F.R. §§ 655.201(a)(1), (b)(1) (1981). The application must be filed in sufficient time to allow the agency to recruit through the interstate clearance system for 60 days prior to the estimated date of the start of employment. Id., at (c). The regulations further provide that the employer must include assurances that the job opportunity is "open to all qualified U.S. workers without regard to race, color, national origin, sex, or religion, and is open to U.S. workers with handicaps who are qualified to perform the work," and that the employer will continue to seek U.S. workers until the foreign workers have departed for the employer's place of employment. 29 C.F.R. §§ 655.203(c), (d). Finally, the regulations require that "each employer's job offer to U.S. workers must offer U.S. workers at least the same benefits which the employer is offering, intends to offer, or will afford, to temporary foreign workers." 20 C.F.R. § 655.202(a). Similarly, the employer may not impose obligations or restrictions on domestic workers that are not, or will not be, imposed on foreign workers. Ibid.

458 U.S. at 595-96 (footnotes omitted). "U.S. workers" are defined to include aliens legally permitted to work permanently within the United States. 8 U.S.C. § 1101(a)(15)(H)(ii); 20 C.F.R. §§ 655.200, 656.50 (1981).

The Act also provides for federal subsidy of State employment offices meeting standards set by the Act. 29 U.S.C. § 49d(b). Funds available under the Wagner-Peyser Act may not be paid to a jurisdiction unless the jurisdiction has an unemployment compensation

law approved by the Secretary of Labor under the Federal Unemployment Tax Act. Id.*

No State is required to participate in the federal employment clearinghouse system. Id. § 49c.

Present applicability.

The Wagner-Peyser Act defines "State" to include Puerto Rico, Guam, the District of Columbia, and the Virgin Islands. 29 U.S.C. § 49b(b). By operation of section 502(a)(2) of the Covenant, the Northern Mariana Islands is a "State" for purposes of the Wagner-Peyser Act.

The Immigration and Nationality Act, with exceptions not pertinent here, is inapplicable to the Northern Mariana Islands. Covenant § 503(a).** The Northern Mariana Islands is thus outside the United States for purposes of that Act. As noted above, alien workers may be brought into the United States after a determination that no qualified "U.S. workers" are available in the United States. But, because the Northern Mariana Islands is not part of the United States for purposes of the Act, the search for qualified unemployed workers need not extend to the Northern Mariana Islands. (And, of course, alien workers may be brought into the Northern Mariana Islands without regard for requirements in the Immigration and Nationality Act.)

Participation of the Northern Mariana Islands in the nationwide employment service system established by the Wagner-Peyser Act is not inconsistent with exemption of the Northern Mariana Islands from the Immigration and Nationality Act. Any public employment service in the Northern Mariana Islands receiving funds under the Wagner-Peyser Act simply need not perform those functions related to administration of the federal immigration laws.

Under the Wagner-Peyser Act, Guam is excepted from the requirement that a jurisdiction have an unemployment compensation law approved by the Secretary of Labor under the Federal Unemployment Tax Act. 29 U.S.C. § 49d(b). The Federal Unemployment Tax Act does not

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*The Federal Unemployment Tax Act is codified at sections 3301 to 3308 of title 26 of the United States Code.

**The Commission has concluded that the Immigration and Nationality Act, with the same exceptions, should remain inapplicable to the Northern Mariana Islands. See the discussion of chapter 12 of title 8 of the United States Code, above.

apply in Guam. 26 U.S.C. § 3306(j). Because that Act does not apply in Guam, it also is inapplicable in the Northern Mariana Islands. See Covenant §§ 502(a), 601(c). Because the Wagner-Peyser Act is legislation providing federal services and financial assistance, it applies to the Northern Mariana Islands as it does to Guam. Id. § 502(a)(1). Accordingly, the Northern Mariana Islands is also exempt from the requirement that it have an approved unemployment compensation law in order to receive funds under the Wagner-Peyser Act.

Discussion.

The advantage to the Northern Mariana Islands in applying the Wagner-Peyser Act in the Northern Mariana Islands is that federal money is available to subsidize the operation of a local employment clearinghouse in the Northern Mariana Islands. The principal function of such a clearinghouse, to match workers who are seeking employment with employers who are seeking job applicants, is well-suited to the needs of the developing economy of the Northern Mariana Islands. Applying the Wagner-Peyser Act in the Northern Mariana Islands is thus consistent with the obligation of the United States to promote the economic development of the Northern Mariana Islands. See Covenant § 701.

The Northern Mariana Islands already has a local employment clearinghouse established under local law. By meeting the requirements of the Wagner-Peyser Act, that office is eligible to receive federal funding. Provision of that funding is consistent with the promise of the United States to "make available to the Northern Mariana Islands the full range of federal programs and services available to the territories of the United States." Covenant § 703(a).

No effort should be made at this time to require employers in the United States to consider available qualified workers residing in the Northern Mariana Islands or to require employers in the Northern Mariana Islands to consider available qualified workers residing in the United States before filling vacancies with nonresident alien workers. Transportation and communication between the Northern Mariana Islands and other parts of the United States are too time-consuming and costly to make such requirements practicable. The federal minimum wage is not applicable in the Northern Mariana Islands. Covenant § 503(c). Wages in the economically less developed Northern Mariana Islands are considerably lower than in the United States. Consequently, few workers in the United States are likely to be attracted by vacancies in the Northern Mariana Islands.

While some small advantage might accrue to a few residents of the Northern Mariana Islands were they given preference over nonresident aliens for vacancies in other parts of the United

States,* that advantage is likely to be offset by the costs to the employment office in the Northern Mariana Islands in administering participation of the Northern Mariana Islands in the national system.

The Wagner-Peyser Act, establishing the United States Employment Service and the national employment clearinghouse system, should continue to apply in the Northern Mariana Islands. No legislation is necessary for its continued application.

TITLE 30. MINERAL LANDS AND MINING.

The Commission's staff examined title 30 in its entirety, but did not compile and edit its research for inclusion in this report. No significant problems in the application of title 30 to the Northern Mariana Islands were uncovered by the staff's research or otherwise brought to the Commission's attention.

TITLE 31. MONEY AND FINANCE.

INTRODUCTION.

Note. No major changes are recommended in the current applicability to the Northern Mariana Islands of title 31. A number of relatively minor and technical changes are recommended. Each recommended change, if implemented, would cause a particular federal law to apply to the Northern Mariana Islands as it now applies to Guam and the other territories and possessions of the United States. See, in the Recommendations section of this report, the following recommendations: Northern Mariana Islands financial institutions as federal depositaries; Issuance of substitute federal checks; Federal employee allotments to credit unions; and Public participation in block grant proposals.

The statutes.

Title 31 collects statutes regulating the internal financial management of the Federal Government. Included in title 31 are the statutory charters of the Department of the Treasury and other federal financial management agencies; laws governing the collection,

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*Citizens of the Northern Mariana Islands residing in other parts of the United States are already entitled to preference over nonresident aliens. 8 U.S.C. § 1101(a)(15)(H)(ii); 20 C.F.R. §§ 655.200, 656.50 (1984).

budgeting, appropriation, and expenditure of federal monies; statutes relating to the manufacture and circulation of coins and paper currency; and procedures governing grants from the Federal Government to States and other entities.

Title 31, which was revised and enacted into positive law in 1982,* is divided into six subtitles. Each of the subtitles is examined separately below.

Present applicability.

Most provisions in title 31 relate to the internal management of the financial resources of the Federal Government, and apply wherever the Federal Government functions. The Northern Mariana Islands is within the American political family, receives monies from the Federal Government for various purposes, and uses United States currency. The Northern Mariana Islands is thus affected by title 31 to roughly the same extent as are all other American political jurisdictions.

A few provisions in title 31 are of particular concern to the Northern Mariana Islands. The present applicability of those provisions to the Northern Mariana Islands is discussed in the subtitle-by-subtitle analysis of title 31, below.

"United States" is defined, for purposes of title 31, to mean "when used in a geographic sense . . . the States of the United States and the District of Columbia." 31 U.S.C. § 103. Even though the Northern Mariana Islands is not included within that definition, the definition (as will be seen below) does not operate to make the title inapplicable to the Northern Mariana Islands.

Prior to the recodification of title 31 in 1982, the title included a provision requiring federal employees in the continental United States paid from appropriated funds to be United States citizens. The provision, formerly section 699b of title 31, was omitted from the codification not because it has been repealed but because it is a "recurrent provision" frequently reenacted in annual appropriations legislation. In its 1982 interim report to the United States Congress, the Commission recommended enactment of legislation to treat citizens of the Northern Mariana Islands as citizens of the

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*No substantive changes were intended in the revision and recodification of title 31. The revision "substitutes simple language for awkward and obsolete terms and eliminates superseded, executed, and obsolete laws." Publisher's Explanation, 31 U.S.C. at v. See Public Law 97-258, § 4, 96 Stat. 877 (1982); House Report 97-651, at 1-5 (1982).

United States for purposes of all such requirements. Section 17 of Public Law 98-213, 97 Stat. 1459, enacted in 1983, provides that "No provision of law prohibiting the payment of compensation to, or employment of, any person not a citizen of the United States of America by the United States of America shall bar the United States of America from paying compensation to or employing any citizen of the Northern Mariana Islands."

SUBTITLE-BY-SUBTITLE ANALYSIS OF TITLE 31.

SUBTITLE I. GENERAL.

The statutes.

Subtitle I of title 31 contains the statutory charters of the Department of the Treasury (chapter 3), the Office of Management and Budget (chapter 5), and the General Accounting Office (chapter 7).*

The principal functions of the Department of the Treasury are formulating and recommending domestic and international fiscal, economic, financial, and tax policies; serving as financial agent for the Federal Government; managing the public debt; enforcing federal laws; and manufacturing coins and currency. Principal subdivisions within the Department are the Bureau of Alcohol, Tobacco and Firearms; the Comptroller of the Currency; the United States Customs Service; the Internal Revenue Service; the Bureau of the Mint; the Bureau of Engraving and Printing; the Bureau of the Public Debt; the Bureau of Government Financial Operations; and the Secret Service.

The Office of Management and Budget (OMB) is part of the Executive Office of the President of the United States. OMB assists the President in preparing and administering the budget of the United States. OMB acts as a clearinghouse and coordinator for federal executive agencies in a number of different ways: OMB collects departmental comments on proposed legislation in order to determine the position of the executive branch. The office also advises the President with respect to action to be taken on bills passed by Congress. In addition, OMB generally advises the President on improving the managerial efficiency of the Federal Government.

The General Accounting Office (GAO) is an independent agency within the legislative branch of the Federal Government. The GAO is generally charged with assisting "the Congress, its committees, and its Members in carrying out their legislative and oversight responsibilities . . . ." U.S. Government Manual 41 (1982). The GAO also has audit authority over the receipt, disbursement, and use of

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*Title 31 was enacted without even-numbered chapters.

public monies, and is frequently asked to recommend measures to make the Federal Government more efficient and effective. The GAO is headed by the Comptroller General of the United States (not to be confused with the Comptroller of the Currency, who is part of the Department of the Treasury).

Present applicability.

As with most of title 31, the provisions of subtitle I govern the internal operations of the Federal Government. Those provisions affect the Northern Mariana Islands to the same extent as they affect all other American jurisdictions.

SUBTITLE II. THE BUDGET PROCESS.

The statutes.

Subtitle II of title 31 contains provisions governing the preparation of the federal budget (chapter 11), the appropriation of money by Congress (chapter 13), and the expenditure of, and accounting for, appropriated funds by the executive branch (chapter 15).

Present applicability.

The provisions of subtitle II in general apply to the Northern Mariana Islands as they do to all other American jurisdictions, since they are directed to internal processes of the Federal Government.

Section 1305(1) of title 31, part of subtitle II, appropriates "necessary amounts" to pay the proceeds of the personal estate of a United States citizen dying abroad to the legal representative of the deceased. See generally 22 U.S.C. §§ 1175 et seq.; 22 C.F.R. §§ 72.15 et seq. (1984). In its January 1982 interim report to Congress, the Commission recommended enactment of legislation to treat citizens of the Northern Mariana Islands as citizens of the United States for purposes of a predecessor to section 1305(1), former section 711(1) of title 31. In 1983 Congress enacted Public Law 98-213, 97 Stat. 1459. Sections 19 to 23 of that statute allow the President by proclamation to declare that citizenship requirements in particular federal laws are not applicable to citizens of the Northern Mariana Islands. In 1984 the President removed for citizens of the Northern Mariana Islands the citizenship restriction of section 1305(1). Presidential Proclamation 5207, § 3(d), 49 Fed. Reg. 24365.

SUBTITLE III. FINANCIAL MANAGEMENT.

The statutes.

Subtitle III of title 31 sets forth the borrowing authority of

the United States Government and prescribes how the public debt is to be administered (chapter 31). The subtitle also governs the deposit, custody, and disbursement of federal funds (chapter 33), the Federal Government's internal accounting and auditing procedures (chapter 35), the handling of claims by and against the Federal Government (chapter 37), and the prompt payment of invoices from businesses for goods and services received by the Federal Government (chapter 39).

Present applicability.

In general subtitle III is directed at the internal operations of the Federal Government and, like most of title 31, affects the Northern Mariana Islands as it affects all other American jurisdictions.

For a few provisions in subtitle III, the geographic applicability of the provision may be of some importance. Section 3105(d)(1) allows the Secretary of the Treasury to authorize certain financial institutions to redeem savings bonds and savings notes if those institutions are incorporated "under the laws of the United States, a State, the District of Columbia, or a territory or possession of the United States." Guam is a territory or possession of the United States. Accordingly, by operation of section 502(a) of the Covenant, a financial institution incorporated under the laws of the Northern Mariana Islands may be authorized to redeem savings bonds and savings notes if it meets the other requirements for such authorization.*

Section 3106 allows the Secretary of the Treasury to authorize financial institutions meeting the eligibility requirements of section 3105, above, to redeem retirement and savings bonds. Financial institutions in the Northern Mariana Islands, eligible under section 3105, are also eligible under section 3106 to be authorized to redeem retirement and savings bonds.

A "registered" security is a note, bond, or other certificate of indebtedness the ownership of which is recorded by the Department of the Treasury. 31 C.F.R. § 306.2(n)(1984). Section 3121(g) of title 31 of the United States Code requires certain federal obligations to be registered. Some obligations are excepted from the registration requirement if the "interest on the obligation is payable only outside the United States and its territories and possessions." Guam

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*Although section 3105 was enacted after the effective date of seciton 502 of the Covenant, it restates law in effect prior to the effective date of section 502. Consequently, section 3105 is applicable to the Northern Mariana Islands by operation of section 502.

is a territory or possession of the United States. Accordingly, by operation of section 502(a)(2) of the Covenant, an obligation of the United States is not excepted from the registration requirement if the interest on the obligation is payable in the Northern Mariana Islands.

Section 3124(a) of title 31 exempts obligations of the United States Government from most taxation "by a State or political subdivision of a State." Thus, for example, interest on a United States Savings Bond is not part of the recipient's income for purposes of computing the recipient's State income tax obligation. Section 3124 prohibits taxation only by a State or a political subdivision of a State. Territories and possessions are not explicitly included within the prohibition and, since territories and possessions are specifically mentioned in subsection (b) of the same section, the omission appears intentional. Despite that appearance, however, section 3124(a) should be regarded as prohibiting taxation of federal obligations by territories or possessions, or their political subdivisions. Section 3124(a) implements Article I, Section 8, Clause 2, of the United States Constitution, which empowers Congress "to borrow [m]oney on the credit of the United States." To allow States to tax notes, bonds, and other obligations of the United States would reduce the yield on those obligations to creditors and thus increase the cost to the Federal Government of borrowing money. The courts have consistently held that to allow the States to tax federal obligations without federal permission is inconsistent with the constitutional supremacy of the national government over the States. See American Bank & Trust Co. v. Dallas County, --U.S.--, 103 S.Ct. 3369 (1983); The Banks v. The Mayor, 74 U.S. 16, 23-25 (1868); Weston v. City Council, 27 U.S. (2 Pet.) 449, 464-69 (1829). The same principle is applicable to territories and possessions: To allow a territory to tax federal obligations without federal consent would raise the federal cost of borrowing money and is thus inconsistent with the supremacy of the national government. See generally Domenech v. National City Bank, 294 U.S. 199, 205 (1935); Talbott v. Board of County Commissioners, 139 U.S. 438 (1891); Northern Pacific Railroad Co. v. Rockne, 115 U.S. 600 (1885). Accordingly, section 3124(a) should be construed as prohibiting the government of a territory or possession from taxing obligations of the United States. Since Guam is a territory or possession, by operation of section 502(a)(2) of the Covenant, the government of the Northern Mariana Islands is similarly constrained from taxing obligations of the Federal Government.

Section 3124(b) provides that income from federal notes, bonds, and other obligations is taxable income for purposes of the federal income tax. The section makes clear, however, that this rule does not apply to notes, bonds, and other obligations issued by, among other issuers, the territories and possessions of the United States. The Northern Mariana Islands is now neither a territory nor a

possession of the United States. Although section 3124(b) exempts income from obligations issued by the government of Guam from federal income tax, that section's exemption does not apply to income from obligations issued by the several States. Consequently, section 502(a)(2) of the Covenant does not bring income from obligations issued by the government of the Northern Mariana Islands within the federal income tax exemption of section 3124(b). The nonapplicability of the section 3124(b) exemption to the Northern Mariana Islands is, however, of little importance because section 607(a) of the Covenant provides that "[a]ll bonds or other obligations issued by the Government of the Northern Mariana Islands or by its authority will be exempt, as to principal and interest, from taxation by the United States . . . ."

Section 3303(b) of title 31 allows the Secretary of the Treasury to designate financial institutions in territories and possessions of the United States to receive deposits of federal funds. See the recommendation, Northern Mariana Islands financial institutions as federal depositaries, in the Recommendations section of this report.

Section 3329 requires the Secretary of the Treasury to prohibit sending a check drawn on federal funds "from the United States or from a territory or possession of the United States" to a foreign country if conditions in that foreign country make it unlikely the payee will receive the check or be able to negotiate it for full value. Since Guam is a territory or possession, section 502(a)(2) of the Covenant requires the Secretary to prohibit the sending of such checks from the Northern Mariana Islands to a foreign nation where receipt of the check or the ability to cash the check for full value is unlikely.

Section 3330 imposes similar restrictions on Veterans Administration checks "to be sent to a person in the United States or a territory or possession of the United States" when that person is legally responsible for care of a person in a foreign country. Again, section 502(a)(2) of the Covenant makes the restrictions applicable to Veterans Administration checks sent to persons in the Northern Mariana Islands.

Section 3331(c) authorizes the issuance of substitute checks to replace lost, stolen, or destroyed checks when the original check was drawn on federal funds on deposit in a territory or possession or in a foreign country. See the recommendation, Issuance of substitute federal checks, in the Recommendations section of this report.

Section 3332 authorizes federal employees to have part of their pay sent to certain financial organizations. See the recommendation, Federal employee allotments to Northern Mariana Islands credit unions, in the Recommendations section of this report.

Section 3342(a)(3) allows a disbursing official of the United States Government, in a foreign country where satisfactory banking facilities are not available, to cash checks drawn on the United States Treasury for the accommodation of any person who is a United States citizen. In its January 1982 interim report to the United States Congress, the Commission recommended enactment of legislation to treat citizens of the Northern Mariana Islands as citizens of the United States for purposes of this provision.* In 1983, Congress enacted Public Law 98-213, 97 Stat. 1459. Sections 19 to 23 of that statute allow the President by proclamation to declare that citizenship requirements in particular federal statutes are not applicable to citizens of the Northern Mariana Islands. In 1984 the President removed for citizens of the Northern Mariana Islands the citizenship restriction on check cashing under section 3342(a)(3). Presidential Proclamation 5207, § 3(d), 49 Fed. Reg. 24365.

Section 3702(b)(1) requires that certain claims against the United States Government be made within six years after the claim accrues. An exception, however, is made for claims "of a State, the District of Columbia, or a territory or possession of the United States." Guam is a territory or possession. Accordingly, by operation of section 502(a)(2) of the Covenant, the six-year statute of limitations does not apply to claims of the government of the Northern Mariana Islands against the Federal Government.

Section 3714 allows the Secretary of the Treasury to deduct from money owed a State by the United States any losses of principal or interest on defaulted State stocks or bonds held in trust by the Federal Government. "State" is not defined to include territories or possessions. Consequently, the Covenant does not put the Northern Mariana Islands in the position of a State for purposes of section 3714 and the Secretary is not authorized to withhold money owed the Northern Mariana Islands by the United States to offset losses on Northern Mariana Islands stocks or bonds held in trust by the Federal Government.

Section 3725(a) authorizes the Secretary of State to settle, "for not more than $1,500 in any one case, a claim for personal injury or death of an individual not a national of the United States in a foreign country in which the United States exercises privileges of extraterritoriality when the injury or death is caused by an officer, employee or agent of the United States Government (except of a military department . . . or the Coast Guard)." Citizens of the Northern Mariana Islands, prior to termination of the trusteeship, are not nationals of the United States. Covenant §§ 301, 1003(c).

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*At the time of the interim report, prior to the revision of title 31, this provision was section 492a of title 31.

Consequently, the Secretary is authorized under section 3725(a) of this title to settle a claim for personal injury or death of a citizen of the Northern Mariana Islands in a foreign country in which the United States exercises privileges of extraterritoriality when that injury or death is caused by an officer, employee, or agent of the Federal Government. The United States, however, now exercises privileges of extraterritoriality in no foreign country and has not done so for a number of years. 6 M. Whiteman, Digest of International Law 279 (1968). Consequently, whether citizens of the Northern Mariana Islands should be treated as nationals of the United States for purposes of section 3725(a) is entirely academic.

SUBTITLE IV. MONEY.

The statutes.

Subtitle IV of title 31 contains two chapters. Chapter 51 establishes the monetary system of the United States and provides for the manufacture of currency by the Bureau of Engraving and Printing and the minting of coins by the Bureau of the Mint. (Both the Bureau of Engraving and Printing and the Bureau of the Mint are parts of the Department of the Treasury.)

Chapter 53 authorizes the Secretary of the Treasury to take action, in coordination with the federal reserve banks and the Board of Governors of the Federal Reserve System, to alter the value of United States currency as measured against foreign currencies and to further a stable system of exchange rates.

Chapter 53 also requires certain recordkeeping and reporting of transactions whenever more than $10,000 in money or negotiable instruments is moved into or out of the United States. The purpose of these requirements is to aid criminal, tax, and regulatory investigations and proceedings. 31 U.S.C. § 5311. The chapter also requires citizens or residents of the United States and persons in the United States doing business therein to report certain transactions with foreign financial agencies. The Secretary of the Treasury is also authorized to require by regulation that financial institutions in the United States report the existence of all monetary transactions meeting criteria established by the Secretary. The Secretary is further directed to require reports on foreign currency transactions involving United States persons. Chapter 53 also specifies a variety of civil and criminal penalties to encourage compliance with its requirements.

Present applicability.

Chapter 51, establishing the monetary system of the United States and providing for the issuance of currency and coin, in a narrow sense is a set of instructions to the executive branch of the Federal Government, implementing the power of Congress to issue money

and regulate its value.* In a broader sense, however, chapter 51 is applicable wherever the currency and coin of the United States circulate, since the attributes of denomination and value are inseparable from the paper and metal used for money.

Throughout the trusteeship period, the coins and currency of the United States have been, as a matter of local law, the official media of exchange in the Northern Mariana Islands.** Under section 502(a)(1) of the Covenant, federal banking laws apply to the Northern Mariana Islands as they do to Guam. One federal banking law specifically applicable to Guam is the National Bank Act. 12 U.S.C. § 41. Section 5103 of title 31, making federal coin and currency legal tender, was originally enacted as part of the National Bank Act. See historical note following 12 U.S.C. § 38. Accordingly, by operation of section 502(a)(1) of the Covenant, the coins and currency of the United States are legal tender in the Northern Mariana Islands as a matter of federal law.

"United States" is defined, for purposes of the recordkeeping

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*That power is given Congress by Article I, Section 8, Clause 5, of the United States Constitution. See also Legal Tender Cases, 79 U.S. (12 Wall.) 457, 545 (1871).

**When the armed forces of the United States occupied the Northern Mariana Islands, "United States dollar notes regardless of denomination bearing the overstamp 'Hawaii' and all United States coin" were made the only legal tender in the Northern Mariana Islands. Military Governor of the Mariana Islands, Proclamation 4, art. I (1944), reprinted at 1 D. Richard, United States Naval Administration of the Trust Territory of the Pacific Islands 677 (1957). The overprinted currency was referred to as "United States Currency, Hawaiian Series." Id. In 1947 ordinary United States currency and coins were made legal tender throughout the Trust Territory. U.S. Joint Chiefs of Staff, Interim Directive for Military Government for the Former Japanese Mandated Marshall, Caroline, and Mariana Islands and for the Bonin and Volcano Islands, including Marcus Island, part II, ¶ 1, reprinted at 2 D. Richard, United States Naval Administration of the Trust Territory of the Pacific Islands 506, 507 (1957). They have remained legal tender as a matter of the law of the Northern Mariana Islands ever since. See Northern Mariana Islands Executive Order 1-47, ¶ 6 (1947); Trust Territory of the Pacific Islands Interim Regulation 4-48, chap. 9, ¶ 1 (1948), both reprinted at 3 D. Richard, United States Naval Administration of the Trust Territory of the Pacific Islands 1135, 1137, 1159 (1957); 1 Trust Territory Code § 106 (1980); Covenant § 505; Constitution of the Northern Mariana Islands, Schedule on Transitional Matters § 2.

and reporting requirements of chapter 53, to include, in addition to the several States, any territory or possession of the United States whenever the Secretary of the Treasury by regulation includes that territory or possession. 31 U.S.C. § 5312(a)(5). The Secretary by regulation has included all territories and possessions as part of the United States. 31 C.F.R. § 103.11 (1984). Since Guam is a territory or possession, Guam and the several States are part of the United States for purposes of the recordkeeping and reporting requirements of chapter 53. Accordingly, by operation of section 502(a)(2) of the Covenant, the Northern Mariana Islands is also part of the United States for purposes of these requirements. Consequently, persons transporting money or negotiable instruments into or out of the Northern Mariana Islands (other than from or to other parts of the United States) are subject to the reporting requirements of chapter 53. Persons residing in the Northern Mariana Islands and persons in the Northern Mariana Islands doing business there must report foreign transactions as required by chapter 53.

SUBTITLE V. GENERAL ASSISTANCE ADMINISTRATION.

Because of the variety of provisions collected in subtitle V, each of the seven chapters in the subtitle is separately treated below.

Chapter 61. Program Information.

The statutes.

Chapter 61 requires the Office of Management and Budget to collect and disseminate information on federal domestic assistance programs. The Catalog of Federal Domestic Assistance, which lists and describes each such program, is published pursuant to this chapter by the General Services Administration.

Present applicability.

The domestic assistance programs for which information is collected and disseminated pursuant to this chapter include those which provide assistance to the territories or possessions of the United States. Guam is a territory or possession. Accordingly, by operation of section 502(a) of the Covenant, programs providing assistance to the Northern Mariana Islands are included.

As a practical matter, domestic assistance programs may provide assistance to a wide variety of recipients. Examination of the information collected pursuant to this chapter, particularly the Catalog of Federal Domestic Assistance, will usually reveal whether a particular federal program is available in the Northern Mariana Islands, either directly or by operation of section 502(a)(1) of the Covenant. (Section 502(a)(1) makes applicable to the Northern

Mariana Islands "those laws which provide federal services and financial assistance programs" that were applicable to Guam on January 9, 1978. In addition, in section 703(a) of the Covenant, the United States agrees to make available to the Northern Mariana Islands "the full range of federal programs and services available to the territories of the United States.")

Chapter 63. Using Procurement Contracts and Grant and Cooperative Agreements.

The statutes.

Chapter 63 guides federal agencies in selecting appropriate legal instruments to use in acquiring property and services and in providing federal assistance. Such instruments may be executed between the agency, as one party, and a State, a local government, or other recipient, as the other party.

Present applicability.

"State" is defined, for purposes of chapter 63, to include "a territory or possession of the United States." Since chapter 63 was enacted after January 9, 1978, however, the Northern Mariana Islands is not included in this definition of "State" by operation of section 502(a) of the Covenant. That omission is of little consequence, since the operative provisions of the chapter apply equally to "a State, a local government, or other recipient." See 31 U.S.C. §§ 6303, 6304, 6305, 6308. If the Northern Mariana Islands is not "a local government," it certainly falls within the catch-all category, "other recipient." Further, chapter 63 does not prohibit federal agencies from using the prescribed legal instruments to document agreements with other parties, should the Northern Mariana Islands not be considered as even an "other recipient."

Chapter 65. Intergovernmental Cooperation.

The statutes.

Chapter 65 allows States to request from federal agencies information on grants received by the State; requires federal agencies to minimize the time between the transfer of grant funds to a State and the disbursement of those funds by the State; establishes rules for the accountability for and administration of grant funds; allows States to receive federal technical assistance on a reimbursable basis; encourages federal agencies to foster local development in planning agency programs and projects; and establishes mechanisms to ensure effective congressional oversight of grant programs.

Present applicability.

"State" is defined, for purposes of chapter 65, to include "a territory or possession of the United States." 31 U.S.C. § 6501(8). Guam is a territory or possession. Accordingly, by operation of section 502(a) of the Covenant, the Northern Mariana Islands is a State for purposes of chapter 65, and grants and assistance from federal agencies to the Northern Mariana Islands are subject to this chapter's provisions.

Chapter 67. Revenue Sharing.

The statutes.

Pursuant to this chapter, specified amounts of federally-collected revenues are paid to eligible State and local governments for uses determined by those State and local governments.

Present applicability.

Only States of the Union (and their political subdivisions) and the District of Columbia are eligible to receive revenue-sharing funds from the Federal Government. 31 U.S.C. §§ 6701(e), 6705, 6707. Most federal revenues derived from the Northern Mariana Islands, however, are independently payable to the government of the Northern Mariana Islands pursuant to section 703(b) of the Covenant. See also 48 U.S.C. §§ 1397 (Virgin Islands), 1421i (Guam).

Chapter 69. Payment for Entitlement Land.

The statutes.

Since States and their political subdivisions may not tax real property owned by the Federal Government, State and local revenues are diminished in areas where the Federal Government owns land. Chapter 69 authorizes federal payments to State and local governments to compensate them for property taxes they would have received from land were it not owned by the Federal Government.

Present applicability.

"The Commonwealth of the Northern Mariana Islands" is specifically included as a "unit of general local government" eligible to receive payments in lieu of property taxes pursuant to this chapter. 31 U.S.C. § 6901(2)(D). No land in the Northern Mariana Islands, however, is currently owned by the Federal Government.

Chapter 71. Joint Funding Simplification.

The statutes.

Chapter 71 enables State and local governments and private nonprofit organizations to use federal assistance more effectively by requiring federal assistance programs to use the same technical and administrative requirements and by otherwise simplifying their financial and management requirements, so that projects funded by two or more federal agencies involve less paperwork.

Present applicability.

"State" is defined, for purposes of chapter 71, to include "a territory or possession of the United States." 31 U.S.C. § 7102(5). Guam is a territory or possession of the United States. Accordingly, by operation of section 502(a) of the Covenant, the Northern Mariana Islands is a "State" for purposes of chapter 71 and federal agencies, in providing assistance to the Northern Mariana Islands, must comply with the chapter's requirements.

Chapter 73. Administering Block Grants.

Chapter 73 is discussed in the recommendation, Public participation in block grant proposals, in the Recommendations section of this report.

SUBTITLE VI. MISCELLANEOUS.

The statutes.

Subtitle VI contains four chapters. Chapter 91 establishes budget procedures and audit rules for specified corporations owned in whole or in part by the Federal Government. Among the many corporations subject to the chapter are the Federal Deposit Insurance Corporation, the Federal Crop Insurance Corporation, the Rural Telephone Bank, and the Pension Benefit Guarantee Corporation.

Chapter 93 contains laws formerly found in now-repealed title 6 of the United States Code, Sureties and Surety Bonds. A surety bond provides that, in the event an individual or firm does not perform an obligation or contract, the issuer of the bond will pay a specified sum to the person, firm or agency adversely affected by the failure to perform. If an individual or firm is required by a law of the United States to give a surety bond, that bond must meet the criteria established by chapter 93.

Chapter 95 requires the federal Civil Service Retirement System and other federal employee pension plans to publish annual reports fully disclosing their financial condition. The requirements are based on similar requirements applicable to private pension plans under the Employee Retirement Income Security Act, 29 U.S.C. § 1023.

Chapter 97, entitled "Miscellaneous" in a subtitle identically entitled, contains two provisions. Section 9701 establishes the principle that federal agencies to the extent possible should collect fees for services and things of value provided to persons. Section 9702 requires that trust funds held by the Federal Government be invested in obligations of the United States earning at least five percent annual interest.

Present applicability.

Chapter 91 applies to federally-owned corporations regardless of where they may operate. The chapter is thus applicable to the Northern Mariana Islands to the extent that the affected corporations operate in the Northern Mariana Islands.

Chapter 93 treats the territories and possessions of the United States as part of the United States for purposes of the rules governing the issuance of surety bonds required by federal law. 31 U.S.C. §§ 9304(a)(1)(B), 9306(a). Guam is a territory or possession of the United States. Accordingly, by operation of section 502(a)(2) of the Covenant, the Northern Mariana Islands is also part of the United States for purposes of chapter 93.

Chapter 95 is applicable to federal employee pension plans regardless of where the employees enrolled in those plans may work. Federal employees in the Northern Mariana Islands enrolled in a federal pension plan, like all other federal-employee enrollees, benefit from the requirements of chapter 97.

The miscellaneous provisions of chapter 97, on user fees and investment of federal trust funds, apply to the Federal Government without geographic limitation. See 59 Decisions of the Comptroller General 389 (1980). Accordingly, the Federal Government may collect user fees in the Northern Mariana Islands to the same extent it does elsewhere and federal trust funds particularly related to the Northern Mariana Islands must be invested as are other federal trust funds.

TITLE 32. NATIONAL GUARD.

The Commission did not examine this title of the United States Code in detail. No problems in the application of this title to the Northern Mariana Islands were brought to the Commission's attention.

TITLE 33. NAVIGATION AND NAVIGABLE WATERS.

The Commission's recommendation, The Rivers and Harbors Act, in the Recommendations section of this report, discusses chapter 9 of title 33.

Chapter 26 of title 33, the Federal Water Pollution Control Act (also known as the Clean Water Act); chapter 27, the Ocean Dumping Act; and chapter 29, the Deepwater Port Act, are each discussed below.

The Commission's staff examined the remaining chapters in title 33, but did not compile and edit its research for inclusion in this report. No significant problems in the application of these chapters to the Northern Mariana Islands were uncovered by the staff's research or otherwise brought to the Commission's attention.

Chapter 26. Water Pollution Prevention and Control.

The statute.

The Federal Water Pollution Control Act, as extensively amended by the Clean Water Act of 1977 (and therefore usually referred to as the Clean Water Act), 33 U.S.C. §§ 1251 et seq., restricts discharges of substances into the waters of the United States.* The Act establishes a close Federal-State partnership to administer the national pollutant discharge elimination system (NPDES), under the supervision of the Administrator of the Environmental Protection Agency (EPA). Industrial, municipal, and other "point source" dischargers--such as pipes, wells, containers, and vessels--must obtain permits before discharging pollutants into United States waters. Permits are issued either by the EPA or by a State agency if the State has set up its own permit program pursuant to EPA guidelines. 40 C.F.R. part 123 (1984). The EPA is also responsible for designating dumping sites and establishing criteria for ocean dumping within the three-mile territorial limit of the United States and for regulating the disposal of sewage sludge. The Corps of Engineers oversees the discharge of dredged or fill material, unless an EPA-approved State plan is employed instead.

EPA regulations consolidate the NPDES system and the dredge or fill requirements (both from the Clean Water Act) with provisions of the Clean Air Act, the Solid Waste Disposal Act (as it pertains to hazardous waste management), and the Safe Drinking Water Act (regulating injections of substances underground, which may affect water tables). See 40 C.F.R. part 122 (1984).

The Corps of Engineers is authorized under the Clean Water Act to issue permits for discharge of dredged or fill material into United States waters at specified disposal sites developed jointly by the EPA and the Corps. The Corps considers the economic impact on

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*The Act applies to "navigable waters" but defines this term to mean essentially all "waters of the United States." 33 U.S.C. § 1362(7). See also 40 C.F.R. § 401.11(l) (1984).

navigation which would result from failure to utilize a proposed disposal site.* The EPA Administrator, however, may still prohibit dumping that has an unacceptably adverse effect on municipal water supplies, shellfish beds, fisheries, wildlife, or recreation areas.

Present applicability.

The Clean Water Act (the Federal Water Pollution Control Act) defines "State" to include Guam and the Trust Territory of the Pacific Islands. 33 U.S.C. § 1362(3). By operation of section 502(a)(2) of the Covenant, the Northern Mariana Islands is also a "State" covered by the Act.

Discussion.

The ocean and lagoons of the Northern Mariana Islands are important in the daily lives of virtually every family in the Northern Mariana Islands, so that their protection and wise use is of great importance to all.

Island environments are notoriously fragile. Island resources are limited and particularly susceptible to over-exploitation. See generally J. McEachern & E. Towle, Ecological Guidelines for Island Development 7-16 (1974). The Northern Mariana Islands is now undergoing relatively rapid economic development, fueled by the natural desire of the people of the Northern Mariana Islands for an improved standard of living and by the attractiveness of the islands to tourists, particularly tourists from Japan. Care is essential to ensure that unplanned or badly planned development does not have long-term adverse effects on the environment of the Northern Mariana Islands.

One may grant that care is necessary to prevent detrimental effects on the environment, but still argue that this care may be required by local legislation of the Northern Mariana Islands rather than by applying federal laws to the Northern Mariana Islands. The inhabitants of the Northern Mariana Islands may have a better understanding of the environmental relationships in the islands than do scientists or federal officials far away. Further, the process of applying for permits under federal environmental and navigational laws has been criticized, both in the Northern Mariana Islands and elsewhere, as unduly burdensome and time-consuming. Delays are magnified for the Northern Mariana Islands by the distance of the islands from decision-making officials.

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*33 U.S.C. § 1344. As this is section 404 of the Act, these permits are also called "404 permits." See also 33 C.F.R. §§ 209.145(b); 320.2(f) (1984).

Despite these considerations, the Commission supports the continued application of the Clean Water Act to the Northern Mariana Islands. While islanders may have a good understanding of traditional environmental relationships in their islands, the application to island areas of development technology perfected on continental land masses calls for different types of knowledge. Intensive, sophisticated research may be necessary to determine whether plans for a proposed development are reasonably consistent with protection of the environment. While the local government in the Northern Mariana Islands may be able to obtain such research from time to time on a contractual basis, it cannot duplicate on an ongoing basis the routine in-house expertise of the Environmental Protection Agency and the Army Corps of Engineers.

With the grant monies provided under the Clean Water Act,* the Northern Mariana Islands can be assured that the quality of its water supplies does not deteriorate due to the increase in population and economic growth. Because of the enclosed nature of the islands' water supplies this is a matter of long-term importance. Additionally, ongoing efforts to simplify the regulatory burden of applying for and complying with such grants should ease the problems that have occurred in the past.

The Commission does not suggest means for expediting the review of permit applications from the Northern Mariana Islands. Streamlining the permit process may well be necessary, but the protection of the Clean Water Act should not be eliminated by making it inapplicable to the Northern Mariana Islands. Rather, officials administering the Act should be encouraged toward greater efficiency. For example, in a praiseworthy development, the Army Corps of Engineers has recently issued a general permit authorizing the maintenance clearing of rivers, streams, storm drains, and beach areas in the Northern Mariana Islands without the necessity of obtaining specific permits for each activity. Army Corp of Engineers General Permit PODCO-O GP 82-1 (1982).**

The most widely mentioned industries with potential for improving the standard of living in the Northern Mariana Islands are tourism and fisheries. Tourism is highly dependent on maintenance of

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*EPA grants to the Northern Mariana Islands for fiscal 1983 were over $1 million for sewer construction and another $50,000 for water quality projects. 40 Congressional Quarterly Weekly Report 2916 (1982).

**Under the Clean Water Act, the Northern Mariana Islands may expedite the NPDES permit process by establishing its own permit program, under federal guidelines, to replace the federal permit program. 33 U.S.C. § 1342(b), (c).

an environment attractive to vacationers. Fisheries are dependent on the existence of unpolluted waters. These industries and the quality of life in the Northern Mariana Islands should be protected by continued application of the Clean Water Act to the Northern Mariana Islands. Furthermore, nonapplicability of the Act would create a loophole for polluting businesses seeking locations under the American flag where they would not be subject to environmental constraints elsewhere applicable. Attraction of such business to the Northern Mariana Islands is not in the best interests of the Northern Mariana Islands.

The Clean Water Act makes the District Court of Guam or the United States District Court for the District of Hawaii the proper forum for lawsuits arising in the Northern Mariana Islands (or in which the defendants are in the Northern Mariana Islands). Because the Northern Mariana Islands now has its own federal court, the Commission proposes legislative language to make that court the appropriate forum for these lawsuits. See the recommendation, Judicial venue under the Clean Water Act, the Ocean Dumping Act, and the Ocean Thermal Energy Conversion Act, in the Recommendations section of this report.

Chapter 27. Ocean Dumping.

The statute.

The Ocean Dumping Act, part of the Marine Protection, Research, and Sanctuaries Act of 1972, 33 U.S.C. §§ 1401 et seq., regulates the ocean dumping of all types of materials, including dredged material, solid waste, chemicals, sludge, rock, sand, debris, industrial and agriculture waste, municipal waste, and discarded equipment. Permits issued under this Act apply to ocean waters beyond the three-mile limit* and also affect United States vessels or aircraft transporting material from any location to dump into the ocean.

The Environmental Protection Agency (EPA) issues general or special permits for ocean dumping and designates dumping sites. The Army Corps of Engineers has responsibilities under the Act if a permit request involves ocean dumping of dredged material. EPA approval of permits issued by the Corps is required, however, unless the Corps determines no other economically feasible method or site is available. The EPA is required to grant a waiver unless dumping would have an unacceptably adverse effect on municipal water

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*The three-mile limit is the demarcation line between ocean areas covered by this Act and those covered by the Clean Water Act. Pacific Legal Foundation v. Quarles, 440 F. Supp. 316 (D.C. Cal. (1977). See the discussion of the Clean Water Act under chapter 26 of this title, above.

supplies, shellfish beds, fisheries, wildlife or recreational areas.*

The Act also requires that the Secretary of Commerce and the Coast Guard "initiate a comprehensive and continuing program of monitoring and research regarding the effects the dumping of material into ocean waters or other coastal waters. . . ." 33 U.S.C. § 1441. Long-range effects of pollution, overfishing, and man-induced changes in ocean ecology are also to be the subject of research. Id. § 1442.

Present applicability.

The Ocean Dumping Act (the ocean dumping provisions of the Marine Protection, Research, and Sanctuaries Act of 1972) defines "United States" to include the several States, the Territories and possessions of the United States, and the Trust Territory of the Pacific Islands. 33 U.S.C. § 1402(d). Guam is a Territory or possession of the United States. Accordingly, by operation of section 502(a)(2) of the Covenant, the Northern Mariana Islands is part of the United States for purposes of the Act.

Discussion.

The considerations for and against applying the Ocean Dumping Act to the Northern Mariana Islands are largely the same as those for and against application of the Clean Water Act. See the discussion under chapter 26 of this title, above. As with that Act, the Commission recommends that the Ocean Dumping Act continue to apply to ocean areas adjacent to the Northern Mariana Islands. No legislation is necessary to achieve that result.

The Ocean Dumping Act contains language making the District Court of Guam or the United States District Court for the District of Hawaii the proper forum for lawsuits arising in the Northern Mariana Islands (or in which the defendants are in the Northern Mariana Islands). Because the Northern Mariana Islands now has its own federal court, the Commission proposes legislative language to make that court the appropriate forum for these lawsuits. See the recommendation, Judicial venue under the Clean Water Act, the Ocean Dumping Act, and the Ocean Thermal Energy Conversion Act, in the Recommendations section of this report.

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*See generally 40 C.F.R. parts 220-229 (1984) (EPA); 33 C.F.R. parts 320, 324 (1984) (Corps of Engineers). See also V. Yannacone & B. Cohen, Environmental Rights and Remedies § 5.27 (Supp. 1981).

Chapter 29. Deepwater Ports.

The statute.

The Deepwater Port Act of 1974, 33 U.S.C. § 1501 et seq., prohibits ownership, construction, or operation of a deepwater port beyond the territorial seas of the United States without a license issued by the Secretary of Transportation. Deepwater ports are offshore ports for transferring oil from large tankers to pipelines or to smaller tankers able to enter harbors too shallow to accommodate deep-draft ships.

The Act requires the Secretary of Transportation to consult the Environmental Protection Agency and the Army Corps of Engineers on the impact of a deepwater port on the environment and navigation. Licenses are issued only after compliance with the Clean Water Act and the Ocean Dumping Act is assured. Additionally, the governor of the adjacent coastal State must approve the port. 33 U.S.C. § 1503(c).

The Act also prohibits the discharge of oil from ships and provides extensive remedies for violations, including citizens' civil suits and class actions. Additionally, a Deepwater Port Liability Fund is created. 33 U.S.C. § 1517(f). The Act also provides that the port is to be treated as an area of exclusive federal jurisdiction located within a State,* though the ports "do not possess the status of islands and have no territorial seas of their own." 33 U.S.C. § 1518(a).

Present applicability.

The Deepwater Port Act of 1974 defines "State" to include the territories and possessions of the United States. 33 U.S.C. § 1502(18). Guam is a territory or possession of the United States.

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*The federal law, however, is that of the nearest coastal State. 33 U.S.C. § 1518(b). The United States enforces State law as federal law for the deepwater port. Id.

The Act thus applies to Guam and, by operation of section 502(a)(2) of the Covenant, to the Northern Mariana Islands.*

Discussion.

No deepwater ports for the offshore delivery of oil now exist or are known to be planned for the Northern Mariana Islands area, although proposals have been made to locate oil transfer depots at Saipan, Tinian, and Maug. See, for example, Joe Murphy, Pipe Dreams, Pacific Daily News (Guam), November 7, 1981, at 23; Saipan, Tinian Port Sought, Marianas Variety, September 19, 1980, at 3; Tinian Superport Now Sought, Pacific Daily News, September 17, 1980, at 1. These depots would not be deepwater ports within the meaning of the Act, however, since the Act defines such ports to include only those beyond the territorial sea. 33 U.S.C. § 1502(10). The proposals, however, indicate that the Northern Mariana Islands may be well located for a deepwater oil transfer port.

Should a deepwater port be proposed for an ocean area adjacent to territorial waters surrounding the Northern Mariana Islands, the Northern Mariana Islands would be unlikely to have the resources or trained personnel necessary to monitor construction and operation of the port. Further, the jurisdiction of the Northern Mariana Islands to enforce laws of its own beyond territorial waters is questionable. The interests of the Northern Mariana Islands are best protected by continued application of the federal Deepwater Port Act to ocean areas adjacent to the Northern Mariana Islands. No legislation is necessary to secure that continued application.

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*The Act requires United States citizenship of persons seeking licenses for the ownership, construction, or operation of a deepwater port. In its January 1982 interim report to Congress, the Commission recommended enactment of legislation to suspend this requirement for citizens of the Northern Mariana Islands pending termination of the trusteeship. In 1983 Congress enacted Public Law 98-213, 97 Stat. 1459. Sections 19 to 23 of that statute allow the President by proclamation to declare that citizenship requirements in particular federal laws are not applicable to citizens of the Northern Mariana Islands. In 1984 the President removed for citizens of the Northern Mariana Islands the citizenship restriction on deepwater port licenses. Presidential Proclamation 5207, § 4(n), 49 Fed. Reg. 24365.

[TITLE 34. NAVY.]

This title was repealed in its entirety in 1956. Act of August 10, 1956, c. 1041, § 53, 70A Stat. 1. Federal laws on the Navy and Marine Corps are now found in subtitle C (§§ 5001 et seq.) of title 10 of the United States Code.

TITLE 35. PATENTS.

The statutes.

The federal protection afforded patents derives from Article I, Section 8, Clause 8, of the United States Constitution, granting Congress the power:

> To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.

A patent is a grant of property made by the government to an inventor conveying to that individual the exclusive right to make, use, and sell the invention for a term of years. The purpose of patents is encouragement of scientific discoveries through public disclosure of technological information.

> The policy of the United States laws is that one who has invested time and labor in developing a new product shall have the benefit of his invention, by being given the right to exclude others completely from the enjoyment of his invention. The consideration or quid pro quo which is given the public is the prompt disclosure of a heretofore unknown invention. The purpose of disclosure to the public is to catalyze other inventors into activity and make possible additional advances in the art. The inventor makes a truly Faustian bargain with the sovereign, exchanging secrecy, of indefinite and of possibly perpetual duration, for ephemeral patent rights.
>
> . . .
>
> By way of contrast, the inception of a copyright (or right in a trademark) does not depend upon any administrative act of the government. A copyright (or rights in a trademark) arises spontaneously upon the fulfillment of certain statutory requirements. Copyrights and trademarks may be registered with the appropriate administrative agency of the government, but such registrations merely involve official recognition of preexisting rights.

P. Rosenberg, Patent Law Fundamentals § 1.02 (1982) (footnotes omitted).

The patent laws of the United States establish the Patent and Trademark Office in the United States Department of Commerce; set forth the requirements and procedures for obtaining a patent; and provide rules governing the ownership, transfer, and protection of patents.

Present applicability.

The patent laws define "United States" to include the territories and possessions of the United States. 35 U.S.C. § 100(c). Guam is a territory or possession of the United States. Consequently, the patent laws also apply in the Northern Mariana Islands by operation of section 502(a)(2) of the Covenant.*

Discussion.

The purposes underlying the patent laws are as important in the Northern Mariana Islands as in other areas of the United States. The inventor has the same interest in obtaining profit from his or her creative works. Society has the same interest in allowing invention a certain degree of protection.

Were the federal patent laws not applicable in the Northern Mariana Islands, the Northern Mariana Islands could establish its own patent laws. The cost of enacting and administering those laws would be high, however, and no benefits from local control over patents are apparent. Given the relatively small population of the Northern Mariana Islands, few patents are likely to be sought. A separate system of patent laws would raise questions as to the protection afforded United States and foreign rights in the Northern Mariana

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*Even were the Northern Mariana Islands not considered part of the United States, residents of the Northern Mariana Islands would be able to obtain protection for their products in the United States under those laws. Foreign nationals may obtain United States patents. 35 U.S.C. §§ 101, 102, 104, 119. But the rights of foreign nationals and of United States citizens to be protected against infringement in the Northern Mariana Islands were the Northern Mariana Islands not considered part of the United States would be questionable. 35 U.S.C. § 271(a); Dr. Beck & Co. v. General Electric Co., 210 F. Supp. 86, 92 (S.D.N.Y. 1962), affirmed, 317 F.2d 538 (2d Cir. 1963).

Islands, and that afforded Northern Mariana Islands rights in the United States and in foreign countries. The resulting uncertainties might also discourage potential investors from undertaking activities in the Northern Mariana Islands.

The federal patent laws accordingly should continue to apply in the Northern Mariana Islands. No legislation is necessary for the continued application of these laws in the Northern Mariana Islands.

TITLE 36. PATRIOTIC SOCIETIES AND OBSERVANCES.

and

TITLE 37. PAY AND ALLOWANCES OF THE UNIFORMED SERVICES.

and

TITLE 38. VETERANS' BENEFITS.

The Commission did not examine these titles of the United States Code in detail. No problems in the application of these titles to the Northern Mariana Islands were brought to the Commission's attention.

TITLE 39. THE POSTAL SERVICE.

The statutes.

Title 39 is the basic charter for the United States Postal Service. The title sets forth the purposes, organization, and personnel rules for the Postal Service, defines what is mailable matter, and collects laws governing transportation of the mails.

Present applicability.

Section 403(a) of title 39 requires the Postal Service to "receive, transmit, and deliver" the mails "throughout the United States, its territories and possessions" and to "serve as nearly as practicable the entire population of the United States." Guam is a territory or possession of the United States. Accordingly, by operation of section 502(a)(2) of the Covenant, the Northern Mariana Islands is also among the jurisdictions served by the Postal Service. And, in fact, the Northern Mariana Islands has been served by the United States Postal Service through the many years it has been part of the Trust Territory of the Pacific Islands.*

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*See section 225.1(e) of title 39, C.F.R. (1984), including the Trust Territory within the Western Region of the Postal Service.

The postal abbreviation for the Northern Mariana Islands is "CM". Zip codes are 96951 for Rota, 96952 for Tinian, and 96950 for Saipan and other islands.

Discussion.

The Congress of the United States is given the power "[t]o establish Post Offices and Post Roads" by Article I, Section 8, Clause 7, of the United States Constitution. Congress has provided that "[t]he Postal Service shall have as its basic function the obligation to provide postal services to bind the Nation together through the personal, educational, literary, and business correspondence of the people." 39 U.S.C. § 101(a).

The Northern Mariana Islands is distant from other parts of the United States and, with its small population, generates and receives a relatively small volume of mail. Such communities, however, are the object of special congressional attention:

> [The Postal Service] shall provide prompt, reliable, and efficient services to patrons in all areas and shall render postal services to all communities. The costs of establishing and maintaining the Postal Service shall not be apportioned to impair the overall value of such service to the people.
>
> The Postal Service shall provide a maximum degree of effective and regular postal services to rural areas, communities, and small towns where post offices are not self-sustaining. No small post office shall be closed solely for operating a deficit, it being the specific intent of the Congress that effective postal services be insured to residents of both urban and rural communities.

Id. § 101. Further, rates for each class of mail are required to be uniform throughout the United States and its territories and possessions. Id. § 3623.

Chapter 30 of title 39 (sections 3001 et seq.) makes certain lottery materials nonmailable. The Commission recommends a limited exemption from these provisions for any mail to an address within the Northern Mariana Islands for a lottery conducted in the Northern Mariana Islands by a nonprofit organization for religious, charitable, educational, or benevolent purposes. See the recommendation, Lottery prohibitions, in the Recommendations section of this report.

TITLE 40.

PUBLIC BUILDINGS, PROPERTY, AND WORKS.

The Commission's staff examined title 40 in its entirety, but did not compile and edit its research for inclusion in this report. No significant problems in the application of title 40 to the Northern Mariana Islands were uncovered by the staff's research or otherwise brought to the Commission's attention.

TITLE 41. PUBLIC CONTRACTS.

Title 41 prescribes procedures federal agencies must follow in procuring goods and services from firms and individuals outside the Federal Government. Some provisions of title 41 apply to federal contracts to be performed in the Northern Mariana Islands while others do not.*

Chapters 3 and 8 of title 41 have been repealed.

Chapter 1. General Provisions.

The statutes.

Chapter 1 contains a variety of provisions governing federal contracts. For example, in general, federal contracts may be awarded only after a publicly advertised solicitation of proposals, 41 U.S.C. §§ 5 et seq. (now largely superceded by id. § 260); contracts may not be executed before appropriations covering the contracted performance have been made by Congress, id. §§ 11-12; land may not be purchased without the express authorization of Congress, id. § 14; federal

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*Even though the government of the Northern Mariana Islands and the governments of other territories and possessions may receive substantial federal funds for particular projects, those funds are regarded as having lost their federal character upon transfer to the territorial government. Consequently, territorial governments in expending those funds are generally not required to procure goods and services in accordance with the procedures set forth in title 41. See generally Porter v. United States, 496 F.2d 583, 586-91 (Ct. Cl. 1974), certiorari denied, 420 U.S. 1004 (1975); 34 Op. Att'y Gen. 217 (1924); Comptroller General Opinion B-131569 (June 11, 1957); 74 Decisions of the U.S. Dep't of the Interior 365, 370 (1967). See also People of Saipan v. United States Department of Interior, 502 F.2d 90, 94-96 (9th Cir. 1974), certiorari denied, 420 U.S. 1003 (1975); Harris v. Boreham, 233 F.2d 110 (3d Cir. 1956). But see Mideast Systems & China Civil Construction Saipan Joint Venture, Inc. v. Clark, --F. Supp.-- (D.D.C. June 26, 1984) (Civil Action 84-1382).

contracts may not be assigned, id. § 15; government contracts are to be deposited with the General Accounting Office, id. § 20; and preference in government purchases is to be given to commodities and services produced by blind or other severely handicapped individuals, id. §§ 46 et seq.

Three important laws included in chapter 1 are the Buy American Act, the Walsh-Healey Act, and the Anti-Kickback Act. These three laws are separately discussed below.

Present applicability.

"State" is defined, for purposes of sections 46 to 48c, governing the purchase of commodities and services produced by blind or other severely handicapped individuals, to include Guam. 41 U.S.C. § 48b(8). By operation of section 502(a)(2) of the Covenant, the Northern Mariana Islands is a State for purposes of these sections. Consequently, qualified nonprofit agencies organized under the laws of the Northern Mariana Islands to operate in the interest of blind or severely handicapped individuals are entitled to the preference afforded such organizations by these sections.

The other miscellaneous provisions in this chapter do not specify their geographic applicability. Each, however, is directed at the Federal Government itself, and none contains exceptions based on the location where a federal contract is to be performed.

The present applicability of the Buy American Act, the Walsh-Healey Act, and the Anti-Kickback Act is discussed, together with the provisions of each of those laws, immediately below.

The Buy American Act

The statutes.

The Buy American Act, 41 U.S.C. §§ 10a-10d, requires that, to the greatest extent possible, the Federal Government purchase for public use within the United States only those articles, materials, and supplies that have been mined, produced, or manufactured within the United States. Exceptions are allowed if such purchases would be "inconsistent with the public interest," if costs would be unreasonably high, or if the desired items cannot be found in the United States in "sufficient and reasonably available commercial quantities and of satisfactory quality."

Present applicability.

The Buy American Act is inapplicable to the Northern Mariana Islands, in that goods purchased for public uses, public buildings, or public works in the Northern Mariana Islands need not be mined, produced, or manufactured in the United States. In another sense,

however, the Act is applicable, in that goods mined, produced, or manufactured in the Northern Mariana Islands are mined, produced, or manufactured within the United States as defined by the Act.

The "public uses," "public buildings," and "public works," for which goods purchased must comply with the Act, are only those within the several States, the District of Columbia, Puerto Rico, American Samoa, and the Virgin Islands. 41 U.S.C. § 10c(b).* See also Comptroller General Opinion B-165293 (March 24, 1969); 74 Decisions of the U.S. Dep't of the Interior 365, 367 (1967). Regulations issued pursuant to the Buy American Act, however, purport to extend the coverage of the Act to any place subject to the jurisdiction of the United States. See 32 C.F.R. parts 6-001.5(e), 6-102.1 (1984); 41 C.F.R. §§ 1-6.101(c), 1-6.103-1, 1-18.601(f), 1-18.602.1 (1984). Since Guam is a place subject to the jurisdiction of the United States, by operation of section 502(a)(2) of the Covenant, the regulations--if valid--extend the Act's coverage to public uses, public buildings, and public works in the Northern Mariana Islands. But, because the Act clearly excludes Guam from the jurisdictions covered by the Act, regulations issued pursuant to the Act cannot extend the Act to Guam. Accordingly, goods for public uses, public buildings, and public works in the Northern Mariana Islands may be procured without regard for the Buy American Act.

Goods mined, produced, or manufactured within the United States and, thus, qualifying for government purchase under the Buy American Act may be mined, produced, or manufactured at "any place subject to the jurisdiction of the United States." See 41 U.S.C. § 10c(a); 32 C.F.R. parts 6-001.1(c), 6-001.5(e), 6-102.1 (1984); 41 C.F.R. § 1-6.101(c) (1984). Since Guam is a place subject to the jurisdiction of the United States, by operation of section 502(a)(2) of the Covenant, goods mined, produced, or manufactured in the Northern Mariana Islands may be purchased for public uses, public buildings, or public works in the United States without violating the Buy American Act. See 74 Decisions of the U.S. Dep't of the Interior 365, 369 (1967).

Discussion.

The treatment of the Northern Mariana Islands for purposes of the Buy American Act is of obvious benefit to the Northern Mariana Islands. Whether the Buy American Act should continue to apply to the Northern Mariana Islands in this manner is a policy decision for the United States Congress. The Commission makes no recommendation on that question.

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*The now-defunct Canal Zone is also listed among the jurisdictions within which compliance is necessary. Id.

The Walsh-Healey Act

The statutes.

The Walsh-Healey Act, 41 U.S.C. §§ 35-45, requires federal contracts for materials, supplies, or equipment valued at more than $10,000 to incorporate guarantees that (1) all persons employed by the contractor will be paid not less than the wages determined by the Secretary of Labor to be the prevailing minimum wages for persons employed in similar work in the same locality; (2) no person employed by the contractor may work in excess of eight hours in any one day or in excess of forty hours in any one week except under a collective bargaining agreement limiting the employee's total hours or compensating the employee at one and one-half times regular wages for overtime hours worked; (3) the contractor will employ neither child labor nor, except in limited specified circumstances, convict labor; and (4) the contractor will provide a safe, sanitary workplace for each employee.

Present applicability.

The Walsh-Healey Act does not specifically define the geographic extent of its applicability. Provision is made, however, for enforcement of the Act in the federal courts "of any Territory or possession." 41 U.S.C. § 39. That provision strongly implies a congressional intent to apply the Act to federal contracts performed in the Territories and possessions of the United States. Since Guam is a Territory or possession of the United States, by operation of section 502(a)(2) of the Covenant, the Act also applies to federal contracts performed in the Northern Mariana Islands.

Further, section 502(b) of the Covenant provides that "[t]he laws of the United States regarding . . . the conditions of employment, including the wages and hours of employees, will apply to the activities of the United States government and its contractors in the Northern Mariana Islands." The principal purpose of section 502(b) is to ensure that the United States Government and its contractors will pay the federal minimum wage to their employees in the Northern Mariana Islands. See the discussion of sections 502(b) and 503(c) of the Covenant in the section-by-section analysis of that document by the Senate and House Committees on Interior and Insular Affairs, the Marianas Political Status Commission, and the United

States Department of Justice.* Although section 502(b) is directed principally toward the federal minimum wage law, its language encompasses all federal laws regarding the conditions of employment.

The Walsh-Healey Act is such a law, and is therefore specifically applicable to federal contracts to be performed in the Northern Mariana Islands. Be that as it may, the Secretary of Labor has broad discretion to allow exemptions from the requirements of the Act. 41 U.S.C. § 40; 41 C.F.R. § 50-206.2 (1984). The Secretary has exercised that discretion to make the Act applicable only to contracts performed within the fifty States, the District of Columbia, Puerto Rico, and the Virgin Islands. 41 C.F.R. § 50-201.603 (1984). See also 32 C.F.R. § 12-602.1 (1984); 41 C.F.R. § 1-12.602-1 (1984). Accordingly, the Walsh-Healey Act is not now applicable to federal contracts performed in the Northern Mariana Islands.

The Anti-Kickback Act

The statutes.

The Anti-Kickback Act, 41 U.S.C. §§ 51-54, makes criminal any payment or gift by a subcontractor to any officer, partner, agent, or employee of a higher tier subcontractor or of the prime contractor when the prime contract is a negotiated contract with the Federal Government (or any of its departments, agencies, or establishments). The Act also allows the United States to withhold the amount of any such payment or the value of any such gift from amounts due under the contract.

Present applicability.

Congress, in enacting the Anti-Kickback Act, intended to reach all kickbacks in negotiated contracts with the Federal Government.

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*The House committee's analysis in included in House Report 94-364, at 5, 8-9 (1975). The Senate committee's analysis is found in Senate Report 94-433, at 65, 77-78 (1975). The section-by-section analysis by the Marianas Political Status Commission is reprinted in Hearings on the Covenant to Establish the Commonwealth of the Northern Mariana Islands before the Subcommittee on Territorial and Insular Affairs of the House Committee on Interior and Insular Affairs, 94th Cong., 1st Sess. 626 (1975) and in Hearings on the Northern Mariana Islands before the Senate Committee on Interior and Insular Affairs, 94th Cong., 1st Sess. 356 (1975). The Department of Justice's memorandum is reprinted in the forementioned House committee hearings at 384, 389.

See United States v. Acme Process Equipment Co., 385 U.S. 138, 146 (1966). Accordingly, such contracts made or to be performed in the Northern Mariana Islands are subject to the Act.

Chapter 2. Termination of War Contracts.

The statutes.

Chapter 2, sections 101 et seq. of title 41, was originally enacted as the Contract Settlement Act of 1944, to establish procedures for expeditious settlement of war contracts abruptly terminated at the conclusion of World War II. 41 U.S.C. § 101; United States v. Erie Basin Metal Products, Inc., 244 F.2d 809, 815 (7th Cir. 1957). The Act contained no expiration date, but post-World War II contracts are governed by the Armed Services Procurement Act of 1947 (codified in part IV of subtitle A of title 10 of the United States Code). See 3 Government Contracts Reporter (CCH) ¶ 22,010 (1982).

Present applicability.

This chapter is applicable to war contracts without regard for the locations where the contracts are made or to be performed and, thus, is applicable to war contracts made or performed in the Northern Mariana Islands. The extensive territorial reach of the chapter is demonstrated by one provision in the chapter allowing contracting agencies in certain instances to exempt from the chapter's requirements war contracts made or to be performed outside the continental United States and Alaska. 41 U.S.C. § 125. Because the chapter, for all practical purposes, has been superseded by the Armed Forces Procurement Act, cited above, its present applicability to the Northern Mariana Islands is of little consequence.

Chapter 4. Procurement Procedures.

The statutes.

Chapter 4, sections 251 et seq. of title 41, collects various requirements governing contracts with the Federal Government. Among these requirements, for example, are provisions for advertising for bids on federal procurement contracts, 41 U.S.C. § 253, and other provisions governing contracts that may be made without advertising, id. § 252(c). A "fair proportion" of federal procurement requirements are to be obtained from small business concerns. Id. § 252(b). Advance payments to contractors are permitted under certain circumstances. Id. § 255. (Some provisions in chapter 4 supercede similar provisions in chapter 1 of title 41 for all contracts made by "executive agencies," but not for contracts made by other parts of the Federal Government. See id. § 260.)

Chapter 4 does not apply to procurement by the Department of Defense, the Coast Guard, or the National Aeronautics and Space Administration (NASA). 41 U.S.C. § 252(a)(1). Procurement for the Department of Defense, the Coast Guard, and NASA is governed by chapter 137 of title 10 of the United States Code (§§ 2301 et seq.). 10 U.S.C. § 2303(a). Despite this division in statutory procurement authority, uniform Federal Acquisition Regulations have been developed to govern procurement by all federal executive agencies. See title 48, C.F.R. (1984).

Present Applicability.

Chapter 4 contains no explicit specification of its geographic reach. Section 252(c)(6), however, allows an exception from the chapter's requirements for advertising of federal contracts if "the property or services are to be procured and used outside the limits of the United States and its possessions." The exception would not be necessary unless the advertising requirements of the chapter were otherwise applicable to the possessions of the United States. There is no reason to assume that the rest of the chapter, almost all of which was originally enacted at the same time as the advertising requirements, is not similarly applicable to possessions of the United States. Since Guam is a possession of the United States, by operation of section 502(a)(2) of the Covenant, the requirements of chapter 4 apply to contracts for property or services procured or to be used in the Northern Mariana Islands. This conclusion is consistent with that of the Federal Procurement Regulations, which by their own terms are applicable "to procurements made within and outside the United States, unless otherwise specified." 41 C.F.R. § 1-1.004 (1983).

Chapter 5. Judicial Review of Administrative Decisions.

The statutes.

Chapter 5, sections 321 and 322 of title 41 (also known as the Wunderlich Act), provides that (1) provisions in federal contracts making administrative decisions final do not bar challenges in court of decisions alleged to be fraudulent, capricious, arbitrary, so grossly erroneous as necessarily to imply bad faith, or not supported by substantial evidence; and (2) federal contracts may not contain provisions purporting to make administrative decisions on questions of law final, unreviewable by the courts.

Present applicability.

Chapter 5 does not specify the extent of its geographic applicability. On its face, the chapter applies to all federal contracts without exception. Accordingly, the chapter should be assumed applicable to federal contracts made or to be performed in the Northern Mariana Islands.

Chapter 6. Service Contract Labor Standards.

The statutes.

Chapter 6, sections 351 et seq. of title 41, requires all federal contracts for personal services furnished in the United States and valued in excess of $2,500 to contain provisions specifying that employees providing services under the contract will receive minimum prevailing local wages and fringe benefits or, if applicable, union wages and fringe benefits. The chapter does not cover contracts subject to the Walsh-Healey Act, discussed under chapter 1 of this title, above. 41 U.S.C. § 356(2).

Present applicability.

"United States" is defined for purposes of chapter 6 to include, in addition to the several States and other jurisdictions, Guam and a number of other named islands including Eniwetok and Kwajalein Atolls in the Trust Territory, but not including the Northern Mariana Islands. 41 U.S.C. § 357(d). See also 29 C.F.R. § 4.112 (1984); 41 C.F.R. § 1-12.902-1(b) (1984). Areas not specifically named are not included within the definition. Id. Even though the Northern Mariana Islands is not specifically named, by operation of section 502(a)(2) of the Covenant, the Northern Mariana Islands is part of the United States for purposes of chapter 6. Further, since chapter 6 is a federal law "regarding . . . the conditions of employment, including the wages and hours of employees," it is applicable to federal contractors in the Northern Mariana Islands. Covenant § 502(b). See the discussion of the present applicability of the Walsh-Healey Act under chapter 1 of this title, above. Accordingly, chapter 6 is applicable to federal contracts for personal services furnished in the Northern Mariana Islands.

Chapter 7. Office of Federal Procurement Policy.

The stautes.

Chapter 7, sections 401 et seq. of title 41, establishes the Office of Federal Procurement Policy "to provide overall direction of procurement policies, regulations, procedures, and forms for [federal] executive agencies." 41 U.S.C. § 402(b).

Present applicability.

The activities of the Office of Federal Procurement Policy are part of the internal management of the Federal Government. Changes in federal procurement policies, regulations, procedures, and forms as a result of the Office's activities will affect the Northern Mariana Islands to the extent those policies, regulations,

procedures, and forms are applicable to procurement activities in the Northern Mariana Islands.*

Chapter 9. Contract Disputes.

The statutes.

Chapter 9, sections 601 et seq. of title 41, establishes standard procedures for resolution of disputes arising out of federal contracts.

Present applicability.

Chapter 9 applies to contracts to which a federal agency is a party. 41 U.S.C. §§ 601(2), 602(a). The unlimited geographic reach of the chapter is shown by a provision allowing an agency head to declare the chapter inapplicable to certain contracts between the agency and a foreign government. Id. § 602(c). Accordingly, the chapter is applicable to federal contracts made or to be performed in the Northern Mariana Islands.

TITLE 42. THE PUBLIC HEALTH AND WELFARE.

The Commission's recommendation, Medicaid, in the Recommendations section of this report, discusses subchapter XIX of chapter 7 of title 42.

Chapter 85 of title 42, containing the Clean Air Act, and chapter 99, containing the Ocean Thermal Energy Conversion Act, are discussed below.

The Commission's staff examined the other chapters in title 42, but did not compile and edit its research for inclusion in this report. No significant problems in the application of these chapters to the Northern Mariana Islands were uncovered by the staff's research or otherwise brought to the Commission's attention.

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*Circular A-102, promulgated by the Office of Federal Procurement Policy, establishes uniform requirements for federal assistance to State and local governments, and thus imposes requirements those State and local governments must satisfy in order to receive federal assistance. Circular A-102 has been held applicable to grants by the United States Department of the Interior to the Northern Mariana Islands. Mideast Systems & China Civil Construction Saipan Joint Venture, Inc. v. Clark, --F. Supp.-- (D.D.C. June 26, 1984) (Civil Action 84-1382).

Chapter 85. Air Pollution Prevention and Control.

The statute.

Chapter 85 contains the Clean Air Act, which seeks to protect public health by preventing or controlling air pollution. The Act "affects virtually all industrial and transportation activity, the production and use of energy, and real estate development." 1977 Congressional Quarterly Almanac 627.

A prominent federal role under the Act is performed by the United States Environmental Protection Agency (EPA). The EPA sets standards for maximum concentrations of various airborne pollutants believed harmful to health or the environment. The States, under EPA oversight, are responsible for formulating and enforcing rules to prevent airborne pollutants form exceeding concentrations allowed by the EPA.

The automobile is an important source of air pollution nationally, and provisions directed at controlling automobile exhaust emissions are an important part of the Clean Air Act.

No funds have been authorized to be appropriated for implementation of the Clean Air Act beyond September 30, 1981. See section 327 of the Act, 42 U.S.C. § 7626. The National Commission on Air Quality issued a report, "To Breath Clean Air," in March 1981, which recommends a number of changes in the Act. President Reagan has sent Congress a set of proposed principles intended to guide drafting of reauthorizing legislation. "Changes Proposed for Clean Air Act," New York Times, August 6, 1981, at A-11. (Neither the report of the National Commission nor President Reagan's principles touch directly on the special situation of the Northern Mariana Islands.) Significant revisions in the Act were not made before September 30, 1981, when the existing authorization expired, but funding has been extended under continuing resolutions of Congress.

Present applicability.

The Clean Air Act was amended in 1977 to apply expressly to the Northern Mariana Islands. Section 218 (c) of Public Law 95-95, 91 Stat. 761, amended the definition of "State," as that term is used in the Clean Air Act, to include the Northern Mariana Islands. The clear intent of this amendment was to include the Northern Mariana Islands within the coverage of the Act. House Report 95-294, at 341 (1977). Why the 1977 amendments extended the Act to the Northern Mariana Islands is not indicated by the various congressional reports on the legislation. See id. 341, 436; Senate Report 95-127, at 94 (1977); House Conference Report 95-564, at 83, 195 (1977).

The term "State," as used in the Act, is defined to include as well the Commonwealth of Puerto Rico, the Virgin Islands, Guam, and American Samoa. Section 302(d), 42 U.S.C. § 7602(d). "States" have particular responsibilities under some provisions of the Act. See, for example, section 107(a), 42 U.S.C. § 7407(a) (State responsibility for assuring air quality). Although not all other provisions of the statute use the term "State," a definition of "State or "United States" to include a particular jurisdiction for purposes of a statute is strong evidence of congressional intent that the statute be applicable in that jurisdiction in all respects. Rubenstein v. United States, 153 F.2d 127, 129 (D.C. Cir. 1946). There is no doubt that the Clean Air Act is applicable in its entirety to Puerto Rico, the Virgin Islands, Guam, and American Samoa, as well as to the Northern Mariana Islands.

Discussion.

In its January 1982 interim report to the Congress, the Commission recommended enactment of legislation to exclude the Northern Mariana Islands from provisions of the Clean Air Act governing motor vehicle emission and fuel standards and to require the Administrator of the Environmental Protection Agency to exempt the Northern Mariana Islands from any other requirement of the Clean Air Act on a finding by the governor of the Northern Mariana Islands that the benefits of compliance with that requirement in the Northern Mariana Islands are significantly outweighed by the costs of the compliance. Detailed support for that recommendation may be found in the Commission's interim report.

In December 1983, Public Law 98-213, 97 Stat. 1459, became law. Section 11 of that legislation amends the Clean Air Act by, among other things, providing that:

> (1) Upon petition by the governor of Guam, American Samoa, or the Commonwealth of the Northern Mariana Islands, the Administrator [of the Environmental Protection Agency] is authorized to exempt any person or source or class of persons or sources in such territory from any requirement under this Act other than section 112 or any requirement under section 110 or part D necessary to attain or maintain a national primary ambient air quality standard. Such exemption may be granted if the Administrator finds that compliance with such requirement is not feasible or is unreasonable due to unique geographical, meteorological, or economic factors of such territory, or such other local factors as the Administrator deems significant. Any such petition shall be considered in accordance with section 307(d) and any exemption under this subsection shall be considered final action by the Administrator for the purposes of section 307(b).

(2) The Administrator shall promptly notify the Committees on Energy and Commerce and on Interior and Insular Affairs of the House of Representatives and the Committees on Environment and Public Works and on Energy and Natural Resources of the Senate upon receipt of any petition under this subsection and of the approval or rejection of such petition and the basis for such action.

42 U.S.C. § 7625-1.*

Chapter 99. Ocean Thermal Energy Conversion.

The statute.

The Ocean Thermal Energy Conversion Act of 1980, 42 U.S.C. §§ 9101 et seq., regulates ocean thermal energy conversion (OTEC) facilities. These facilities exploit differences in temperature between the surface of the ocean and its lower depths to generate electricity. The Act requires a license for the ownership, construction, or operation of an OTEC facility located in the territorial sea of the United States, or connected to the United States by pipeline or cable, or documented under the laws of the United States. Id. § 911(a), (f).

The Administrator of the National Oceanic and Atmospheric Administration must treat issuance of an OTEC license as a "major Federal action" requiring preparation of an environmental impact statement. Id. § 9117(e). The Coast Guard oversees navigation aspects of OTEC activities. Id. § 9118.

Present applicability.

The Ocean Thermal Energy Conversion Act defines "State" to include the Northern Mariana Islands. 42 U.S.C. § 9102(15). Accordingly, the Act is applicable to the Northern Mariana Islands.

Section 9111(a) requires United States citizens to obtain a license to own, construct, or operate an OTEC facility. Subsection (c) of section 9111 authorizes the issuance of such licenses to United States citizens. Subsection (f) requires the issuance of such licenses to qualified United States citizens. Moreover, section 9118(e)(2)(c) requires that OTEC facilities be manned by United States citizens or aliens lawfully admitted for permanent residence,

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*Section 112 of the Clean Air Act, 42 U.S.C. § 7412, governs particularly hazardous air pollutants, such as asbestos and vinyl chloride. Section 307 of the Act, 42 U.S.C. § 7607, governs administrative proceedings and judicial review of administrative action under the Act.

except in specified circumstances. And, finally, section 9151 makes criminal certain acts and omissions by United States citizens or nationals or other persons subject to United States jurisdiction if those acts or omissions violate provisions of the Ocean Thermal Energy Conversion Act. In its January 1982 interim report to the United States Congress, the Commission recommended enactment of legislation to treat citizens of the Northern Mariana Islands as citizens of the United States for purposes of these requirements. In 1983 Congress enacted Public Law 98-213, 97 Stat. 1459. Sections 19 to 23 of that statute allow the President by proclamation to declare that citizenship requirements in particular federal laws are not applicable to citizens of the Northern Mariana Islands. In 1984 the President removed for citizens of the Northern Mariana Islands the citizenship restrictions of this chapter. Presidential Proclamation 5207, § 4(t), 49 Fed. Reg. 24365. Consequently, assistance for the construction of OTEC facilities pursuant to chapter 99 is now available to citizens of the Northern Mariana Islands.

Discussion.

The Northern Mariana Islands is actively considering the desirability of constructing ocean thermal energy conversion facilities.* Because of the great temperature difference between surface waters and ocean depths in parts of the Marianas, an OTEC system there may be able to generate electricity economically.

The issues involved in regulating the development of OTEC facilities are many and complex. See generally 42 U.S.C. § 9101. While the Northern Mariana Islands could develop its own approach to these issues and enact its own regulatory legislation, that effort would be time-consuming and expensive and likely would result in legislation not dissimilar to the federal law. Once enacted, the legislation would require employment of regulatory officials, at additional cost. The more economical course is to rely on federal law for regulation of OTEC facilities in the Northern Mariana Islands.

The Ocean Thermal Energy Conversion Act contains language making the District Court of Guam or the United States District Court for the District of Hawaii the proper forum for lawsuits arising in the Northern Mariana Islands (or in which the defendants are in the Northern Mariana Islands). Because the Northern Mariana Islands now has its own federal court, the Commission proposes legislative

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*See Unsolicited Proposal on OTEC Feasibility and Demonstration Project, reprinted in Hearings on Pacific Basin Energy Before the Senate Committee on Energy & Natural Resources, 96th Cong., 2d Sess. 57 (1980); Financial Study of OTEC Plant Offered to the Commonwealth of the Northern Mariana Islands, Marianas Variety, July 23, 1982, at 1.

language to make that court the appropriate forum for these lawsuits. See the recommendation, Judicial venue under the Clean Water Act, the Ocean Dumping Act, and the Ocean Thermal Energy Conversation Act, in the Recommendations section of this report.

TITLE 43. PUBLIC LANDS.

The Commission did not examine this title of the United States Code in detail. By operation of sections 801 and 1003(a) of the Covenant, all real property in the Northern Mariana Islands previously belonging to the government of the Trust Territory of the Pacific Islands is transferred to the government of the Northern Mariana Islands. See also Covenant §§ 802-804, 806. The Federal Government now holds no interest in property in the Northern Mariana Islands other than leaseholds. Accordingly, most of this title, which deals with federal public lands, is by reason of its subject matter inapplicable to the Northern Mariana Islands.

Chapter 29 of this chapter, on submerged lands, is of importance to the Northern Mariana Islands. See the recommendation, Submerged lands, in the Recommendations section of this report.

TITLE 44. PUBLIC PRINTING AND DOCUMENTS.

The Commission did not examine chapters 1 to 17 and 21 to 37 of this title of the United States Code in detail. No problems in the application of these chapters to the Northern Mariana Islands were brought to the Commission's attention. Chapter 19 of title 44 is discussed in the Commission's recommendation, Government depository libraries, in the Recommendations section of this report.

TITLE 45. RAILROADS.

The statutes.

Title 45 of the United States Code contains federal laws of a general and permanent nature relating to railroads.

Present applicability.

At the present time, there are no railroads in the Northern Mariana Islands.* Although parts of title 45 may be theoretically

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*During the Japanese administration of the Northern Mariana Islands, however, narrow-gauge railroads were extensively used to transport harvested sugar cane.

applicable to the Northern Mariana Islands, the title has no practical application in the Northern Mariana Islands now.

There are three United States citizenship requirements in title 45. Section 231(d)(3) states, for purposes of determining coverage under the railroad retirement laws, that an individual not a citizen or resident of the United States is not deemed in the service of an employer when rendering service outside the United States to an employer who is required under the laws of that place to employ, in whole or in part, citizens or residents thereof. Subsection (h)(6) of section 231 excludes from the definition of compensation certain remuneration received by non-resident aliens temporarily present in the United States.

Section 351 incorporates definitions similar to those in section 231, above, for purposes of determining coverage under the railroad unemployment insurance laws.

Section 543(a)(1) requires that directors of the National Railroad Passenger Corporation be United States citizens. Subsection (d) of section 543 requires officers of the corporation to be United States citizens.

Citizens of the Northern Mariana Islands will not become citizens of the United States until termination of the trusteeship. Covenant §§ 301, 1003(c). Until that time, they will be considered as aliens for purposes of sections 231 and 351 of title 45 and will be ineligible to serve as directors or officers of the National Railroad Passenger Corporation. No recommendations were made with regard to these citizenship requirements in the Commission's January 1982 interim report to the United States Congress.

TITLE 46. SHIPPING.

Although the Commission staff devoted substantial effort to the study of title 46, the staff was unable to complete that study or to present recommendations for Commission consideration prior to publication of this report.

A draft staff recommendation on the vessel documentation and vessel crewing laws, prepared for consideration by the Commission at its ninth meeting, was rendered obsolete by sections 301-303 of Public Law 98-454, 98 Stat. 1732, 1734-35 (1984). That draft is reproduced in the Documentary Supplement to this report.

Its oceanic location makes the Northern Mariana Islands highly dependent on the shipping industry. The Commission believes that the applicability of title 46 to the Northern Mariana Islands merits further study.

TITLE 47. TELEGRAPHS, TELEPHONES, AND RADIOTELEGRAPHS.

The Commission's staff examined title 47 in its entirety, but did not compile and edit its research for inclusion in this report. No significant problems in the application of title 47 to the Northern Mariana Islands were uncovered by the staff's research or otherwise brought to the Commission's attention. See generally Office of Technology Assessment, U.S. Congress, Telecommunications in the U.S. Pacific Islands (staff paper 1985).

Title 47 contains several requirements of United States citizenship. Citizens of the Northern Mariana Islands will not become citizens of the United States until termination of the trusteeship. Covenant §§ 301, 1003(c). Section 303(l)(1) of title 47 limits the issuance of radio station operators' licenses to United States citizens or nationals or to citizens of the Trust Territory of the Pacific Islands "presenting valid identity certificates issued by the High Commissioner of such Territory." Section 310(b) requires that grantees or holders of broadcast, common-carrier, or aeronautical radio station licenses be United States citizens. Section 734(d) limits the number of shares of stock in the Communications Satellite Corporation that may be owned by aliens ineligible to hold broadcast licenses under section 310, above. In its January 1982 interim report to the United States Congress, the Commission recommended enactment of legislation to treat citizens of the Northern Mariana Islands as citizens of the United States for purposes of sections 303, 310, and 734. In May 1982 the President, pursuant to section 1004(a) of the Covenant, issued Proclamation 4938, 47 Fed. Reg. 19307. That proclamation suspended for citizens of the Northern Mariana Islands the citizenship requirements of sections 303 and 310 until termination of the trusteeship. The suspension of the citizenship requirement in section 310 also removes citizens of the Northern Mariana Islands from the category of aliens for purposes of the stock ownership limitations of section 734.

In addition, section 17 of title 47 prohibits ownership, operation, or control of telegraph or cable lines in Alaska by persons who are not citizens of the United States. Section 154(b) requires members of the Federal Communications Commission to be United States citizens. Section 222(d) prohibits the Federal Communications Commission from approving the merger of telegraph carriers if more than one-fifth of the stock of the resulting carrier will be owned by aliens. Section 327 allows United States citizens publishing newspapers in foreign countries to use Navy radio stations for transmission of press messages at commercial rates if no commercial service is available. Paragraphs (c)(2) and (e)(1) of section 396 require that members of the board of directors and officers of the Corporation for Public Broadcasting be United States citizens. Subsections (a) and (b) of section 733 impose the same requirement on members of the board of directors and officers of the

Communications Satellite Corporation. No recommendations were made with regard to these citizenship requirements in the Commission's January 1982 interim report to the United States Congress.

TITLE 48. TERRITORIES AND POSSESSIONS.

Title 48 collects laws of a general and permanent nature specifically directed toward the territories and insular possessions of the United States. Most of the chapters in title 48 gather provisions pertinent to a particular territory or insular possession. Provisions directly affecting the Northern Mariana Islands are found in chapter 14, entitled Trust Territory of the Pacific Islands. (The Covenant and several presidential proclamations on the applicability of particular federal laws to the Northern Mariana Islands are reprinted immediately following section 1681 of title 48).

The applicability of federal laws to Guam often determines the applicability of those laws to the Northern Mariana Islands. See Covenant §§ 502, 601, 603(c), 604(a), 605, 606(b). Consequently, provisions in title 48 regarding the application of federal laws to Guam are of particular interest to the Northern Mariana Islands. See 48 U.S.C. §§ 1421e, 1421h, 1421i, 1421n. (See also section 1421q, applying to Guam certain laws made applicable to the Northern Mariana Islands by section 502(a)(1) of the Covenant.)

Through legislation contained in chapter 15 of title 48, the United States conveyed certain submerged lands adjacent to Guam, the Virgin Islands, and American Samoa to the governments of those territories. In its recommendation, Submerged lands, in the Recommendations section of this report, the Commission proposes enactment of similar legislation for the Northern Mariana Islands.

Chapter 16 establishes the offices of nonvoting delegate to the United States House of Representatives from Guam, the Virgin Islands, and American Samoa. In its recommendation, A nonvoting delegate to the United States Congress, in the Recommendations section of this report, the Commission proposes enactment of legislation establishing the office of nonvoting delegate to the United States House of Representatives from the Northern Mariana Islands.

Provisions in the organic legislation for Guam and the Virgin Islands charge the governors of those territories with enforcement of federal laws within their jurisdictions. 48 U.S.C. §§ 1422, 1591. Problems in executing federal laws in the Northern Mariana Islands are discussed in the recommendation, Enforcement of federal laws in the Northern Mariana Islands, in the Recommendations section of this report.

TITLE 49. TRANSPORTATION.

Title 49 collects federal statutes regulating interstate transportation by rail, air, highways, and inland waterways. The Commission's staff examined title 49 in its entirety, but did not compile and edit its research for inclusion in this report. Except with respect to chapter 20 of title 49 (which contains the Federal Aviation Act), no significant problems in the application of title 49 to the Northern Mariana Islands were uncovered by the staff's research or otherwise brought to the Commission's attention. Chapter 20 is discussed below.

Chapter 20. Federal Aviation Program.

The statute.

Chapter 20 contains the Federal Aviation Act, the basic statute regulating interstate air transportation within the United States as well as air transportation between the United States and places in foreign countries.

Present applicability.

"Interstate and foreign air transportation" is defined, for purposes of chapter 20, to include air transportation between any point in a Territory or possession of the United States and any other point, whether within or outside of that Territory or possession. 49 U.S.C. § 1301(24). See also id. § 1301(23), (41). Guam is a Territory or possession. Consequently, air transportation between Guam and any other place (or between two points on Guam) is subject to chapter 20.

"Interstate and foreign air transportation" also includes, for purposes of chapter 20, air transportation between any point in a State and any point outside of that State, but does not generally include air transportation between two points within the same State.

Chapter 20 is thus applicable to the several States and Guam and, by operation of section 502(a)(2) of the Covenant, to the Northern Mariana Islands. Section 502(a)(2) applies statutes to the Northern Mariana Islands as those statutes apply to the several States, not as they apply to Guam. Consequently, air transportation between points within the Northern Mariana Islands is subject to chapter 20 only to the same extent that air transportation between points within the same State is subject to the chapter.

Various rights, privileges, and immunities under chapter 20 are limited to citizens of the United States. All citizens of the United States are entitled to a public right to freedom of transit through the navigable airspace of the United States. 49 U.S.C. § 1304.

United States citizens operating intrastate air common carriers may establish joint services and fares with other domestic and foreign air carriers. Id. § 1371(d)(4). Certain citizens of the United States may be granted certificates of public convenience and necessity for all-cargo air services. Id. § 1388. Aircraft eligible for registration as aircraft of the United States must be owned by citizens of the United States, by aliens lawfully admitted for permanent residence, or by certain foreign corporations organized and doing business in the United States. Id. § 1401. The Secretary of Transportation may prohibit or restrict the issuance of airman certificates to aliens. Id. § 1422(b)(1). The Secretary may also provide aviation insurance, if such insurance is not commercially available on reasonable terms and conditions, on certain cargo owned by (or the risk of loss of which is on) citizens of the United States. Id. § 1533.

"Citizen of the United States" is defined, for purposes of the chapter, to include individuals who are citizens of the United States or one of its possessions (or partnerships composed of or corporations controlled by such persons). 49 U.S.C. § 1301(16). Citizens of the Northern Mariana Islands will not be citizens of the United States or of one of its possessions until termination of the trusteeship. Covenant §§ 301, 1003(c). An argument can be made that section 502(a)(2) of the Covenant requires that citizens of the Northern Mariana Islands be treated as citizens of the United States for purposes of chapter 20. Nonetheless, to ensure clarity, the Commission in its January 1982 interim report to Congress recommended enactment of legislation to treat citizens of the Northern Mariana Islands as citizens of the United States for purposes of these restrictions. In 1983 Congress enacted Public Law 98-213, 97 Stat. 1459. Sections 19 to 23 of that statute allow the President by proclamation to declare that citizenship requirements in particular federal laws are not applicable to citizens of the Northern Mariana Islands. In 1984 the President removed for citizens of the Northern Mariana Islands the citizenship restrictions in these statutes. Presidential Proclamation 5207, § 4(dd)-(ff), 49 Fed. Reg. 24365.

Discussion.

The Northern Mariana Islands is far removed from other parts of the United States, except Guam. (Honolulu is more than 3000 miles away.) The Northern Mariana Islands and Guam are closer to many foreign nations than to other parts of the United States. The Northern Mariana Islands has a relatively small population, limiting its attraction to air carriers which are not serving on the same flights one or more other destinations.

The Northern Mariana Islands is also relatively isolated from the rest of the world. Frequent and reliable air service is as essential to the Northern Mariana Islands as are roads and public

transportation to a mainland city. Further, tourism, the leading industry in the Northern Mariana Islands, is dependent on frequent and reliable air service.

Air cabotage restrictions. Section 1508(b) of title 49 prohibits foreign airlines from taking on "at any point within the United States persons, property, or mail for compensation or hire and destined for another point within the United States." Thus, for example, a foreign airline's flight from Chicago to New York to Paris may carry passengers from Chicago to Paris or from New York to Paris, but it may not carry passengers from Chicago to New York.

The purpose of section 1508(b) is protection of domestic airlines from foreign competition.* The Northern Mariana Islands and Guam, however, are substantially different from any two other points within the United States. Restrictions on air service between the Northern Mariana Islands and Guam by foreign air carriers are much more likely to limit the total service available than do the same restrictions imposed upon two points with similar populations at the same distance form each other in the United States, say, for example, Eugene and Grants Pass, Oregon.

Eighty percent of all visitors to the Northern Mariana Islands come from Japan.** The Northern Mariana Islands and Guam are an ideal joint tourist destination, with a greater number of visitors attracted to each if tourists may travel easily between the two. See Working Together for Area Tourism, Pacific Daily News (Guam), February 4, 1982, at 18. The airline distance between Saipan, the principal destination in the Northern Mariana Islands, and Guam, is approximately 155 miles, less than eight percent of the Tokyo-Saipan-Guam journey of approximately 2015 miles.

The Commission considered recommending that the air cabotage restrictions be made inapplicable to the transportation of passengers by foreign airlines between Guam and the Northern Mariana Islands or between points within the Northern Mariana Islands. The purpose of the exception would have been to encourage tourists from Japan--the point of origin for most tourists visiting the Northern Mariana Islands and Guam--to visit both Guam and the Northern Mariana Islands, even if they were traveling on a foreign airline. The

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*See American Merchant Marine Carriers v. Fowler, 429 F.2d 702, 708 (2d Cir. 1970), certiorari denied, 400 U.S. 1029 (1971), commenting on a similar statute affecting shipping.

**News release from Office of the Governor of the Northern Mariana Islands, June 1, 1981. Most of the remaining tourists come from the United States.

Commission discovered, however, that the air cabotage restrictions have been interpreted to permit carriage between domestic points if the passenger has a through ticket to or from a foreign point. See Quantas Empire Airways, 29 C.A.B. 33, 41-42 (1959). This interpretation allows passengers originating from, or ultimately destined for, Japan to travel between the Northern Mariana Islands and Guam on foreign airlines. Accordingly, the Commission decided that no legislation with respect to the air cabotage restrictions is necessary at this time.

Essential air service. Small communities in the United States that meet certain criteria are entitled to retain "essential air service." If necessary to maintain that air service, federal subsidies may be paid to the air carrier providing that service. 49 U.S.C. § 1389. The subsidy program will end in 1988. Id. § 1389(g). It may be eliminated even earlier. See Air Service Cuts Eyed, Washington Post, January 29, 1985, at A8.

The Northern Mariana Islands is part of the United States for purposes of the statute authorizing maintenance of essential air service to small communities in the United States. "United States" is defined, for purposes of all of chapter 20, to include the several States and the Territories and possessions of the United States. Id. § 1301(41). Guam is a Territory or possession of the United States. Accordingly, by operation of section 502(a)(2) of the Covenant, the Northern Mariana Islands is part of the United States for purposes of chapter 20. See Civil Aeronautics Board Order 82-6-113, Essential Air Transportation for Rota, Northern Mariana Islands [and] Tinian, Northern Mariana Islands (1982).

The ending of the essential air service subsidy program in 1988 (or sooner) may have a significant adverse effect on the Northern Mariana Islands. The Commission, however, has not examined that possibility in detail and has formulated no recommendations with respect to essential air service. The Commission notes that the Pacific Basin Development Council has devoted considerable effort to studying the provision of essential air service to Pacific islands under the jurisdiction of the United States.*

Local control over air routes serving the Northern Mariana Islands. From time to time, greater local control over the award of air routes serving the Northern Mariana Islands or Guam has been urged. For example, a task force of Guam's Commission on

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*The Pacific Basin Development Council is composed of the governors of the Northern Mariana Islands, Guam, Hawaii, and American Samoa. Its mailing address is 567 South King Street, Suite 620, Honolulu, Hawaii 96813.

Self-Determination recommended that Guam "be exempt from all bilateral and multilateral agreements of the United States relative to air service." Air Service Proposals 'Innovative,' Pacific Daily News (Guam), August 9, 1984, at 5. The task force proposed that the governor of Guam be given "the authority to sponsor any qualified air service carrier to come to Guam subject to presidential consultation concerning articulated foreign policy and national defense interests." Id.

The argument is made that the Northern Mariana Islands, interested in promoting tourism, is benefitted when foreign air carriers are not restricted in providing regular air service and charter flights to the Northern Mariana Islands. See Northern Mariana Islands Commonwealth Legislature, Senate Joint Resolution 1-16 (1978); Rosario, Periscope, Marianas Variety, March 22, 1985, at 2; Flying in the Pacific has Ups and Downs (editorial), Pacific Daily News, December 15, 1984, at 38. Even if this argument is valid, however, other foreign policy interests of the United States and the desire to ensure fair treatment of domestic air carriers may impede the removal of restrictions on foreign air carriers.

The Commission has not examined these issues in detail, and makes no recommendations with respect to them. The Commission believes the issues merit further study.

Airline passenger head taxes. Section 1513 of title 49 prohibits States or territories from levying taxes on airline passengers. This prohibition is applicable to the several States and Guam. 49 U.S.C. § 1513(a). Accordingly, by operation of section 502(a)(2) of the Covenant, the prohibition applies to the Northern Mariana Islands. See also Island Aviation, Inc. v. Mariana Islands Airport Authority (District Court for the Northern Mariana Islands, Civil 81-0048, February 24, 1983).

It has been suggested that legislation should be enacted to make the prohibition of section 1513 inapplicable to the Northern Mariana Islands, in order to allow the Northern Mariana Islands to increase government revenues. The principal source of any such taxes would be tourists visiting the Northern Mariana Islands.

The Commission has not examined this issue in detail and makes no recommendations with respect to it. The issue may merit further study.

TITLE 50. WAR AND NATIONAL DEFENSE.

The Commission's staff examined title 50 and its appendix in their entirety, but did not compile and edit its research for inclusion in this report.

Title 50 contains a number of United States citizenship requirements. Citizens of the Northern Mariana Islands will not become citizens of the United States until termination of the trusteeship. Covenant §§ 301, 1003(c). Section 1801(i) of title 50 defines "United States person" for purposes of certain protections offered by the Foreign Intelligence Surveillance Act as including United States citizens and aliens lawfully admitted for permanent residence. ("United States" is defined by subsection (j) of section 1801 to include, when used in a geographical sense, the Trust Territory of the Pacific Islands.) Section 460(b)(3) of the Appendix to title 50 forbids denial to any United States citizen of membership on a selective service local board or appeal board on account of sex. The same section also requires members of local and appeal boards to be citizens of the United States. Section 514 of the Appendix extends to citizens of the United States serving in the armed forces of a wartime ally of the United States the benefits of the Soldiers' and Sailors' Relief Act, suspending civil legal proceedings against certain persons in the armed forces of the United States. Section 572 of the Appendix extends to United States citizens serving in the armed forces of a wartime ally of the United States certain rights and exemptions related to their tax liabilities. In its January 1982 interim report to the United States Congress, the Commission recommended enactment of legislation to treat citizens of the Northern Mariana Islands as citizens of the United States for purposes of section 1801(i) of title 50 and sections 460(b)(3), 514, and 572 of the Appendix to title 50. In 1983 Congress enacted Public Law 98-213, 97 Stat. 1459. Sections 19 to 23 of that statute allow the President by proclamation to declare that citizenship requirements in particular federal laws are not applicable to citizens of the Northern Mariana Islands. In 1984 the President removed for citizens of the Northern Mariana Islands the citizenship restrictions in these sections. Presidential Proclamation 5207, §§ 5(r), 5(s), 5(t), 5(u).

Other United States citizenship requirements are found in the Trading with the Enemy Act, sections 1 et seq. of the Appendix to title 50. Section 2 of the Appendix defines "enemy" and "ally of enemy" for purposes of the law forbidding trade with either to exclude United States citizens not residing in the territory of a nation with which the United States is at war. The same section defines "United States," apparently only in a geographical sense, to include "all land and water, continental or insular, in any way within the jurisdiction of the United States" including areas occupied by United States military or naval forces. This definition does not expand similarly the definition of "United States" for purposes of determining who is a United States citizen, since Congress did not intend the populace of enemy territory occupied by the United States armed forces to be treated as United States citizens. Section 8(b) gives any United States citizen the right to abrogate any contract entered into with an enemy or ally of an enemy

prior to the beginning of a war or within thirty days after the beginning of the war. Section 10 allows United States citizens, on approval of the President, to pay taxes or fees required by, or file applications with, an enemy, or an ally of an enemy, in connection with patents, copyrights, and trademarks; and allows the President to grant to any United States citizen a license to use patents, copyrights, or trademarks owned by an enemy or an ally of an enemy. Section 12 restricts the sale of alien property to purchasers who are United States citizens, unless the President determines otherwise; and prohibits resale to a person not a United States citizen. In its January 1982 interim report to Congress, the Commission also recommended enactment of legislation to treat citizens of the Northern Mariana Islands as citizens of the United States for purposes of these provisions in the Trading with the Enemy Act. The presidential proclamation issued pursuant to sections 19 to 23 of Public Law 98-213 did not, however, address these provisions.

No other significant problems in the application of title 50 and its appendix to the Northern Mariana Islands were uncovered by the Commission staff's research or otherwise brought to the Commission's attention.

PROPOSED

NORTHERN MARIANA ISLANDS FEDERAL RELATIONS ACT

The Northern Mariana Islands Federal Relations Act, as set forth below, if enacted by Congress, would implement all of the Commission's recommendations.

An Act to specify the applicability or inapplicability of certain federal laws to the Northern Mariana Islands, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, that

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Sec. 1. Short title. This Act may be cited as "The Northern Mariana Islands Federal Relations Act."

Sec. 2. Nonvoting Delegate to Congress. (a) The Northern Mariana Islands shall be represented in the United States Congress by the Resident Representative to the United States authorized by section 901 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (approved by Public Law 94-241, 90 Stat. 263). The Resident Representative shall be a nonvoting Delegate to the House of Representatives, elected as hereinafter provided.

(b)(1) The Resident Representative shall be elected by the people qualified to vote for the popularly elected officials of the Northern Mariana Islands at the regular general election, on the day and month set by section 1 of Article VIII of the Constitution of the Northern Mariana Islands, in the first odd-numbered year subsequent to enactment of this Act and thereafter at such general election every second year thereafter. The Resident Representative shall be elected at large, by separate ballot, and by a majority of the votes cast for the office of Resident Representative. If no candidate receives such majority, on the fourteenth day following such election a runoff election shall be held between the candidates receiving the highest and the second highest number of votes cast for the office of Resident Representative. In case of a permanent vacancy in the office of Resident Representative by reason of death, resignation, or permanent disability, the office of Resident Representative shall remain vacant until a successor shall have been elected and qualified.

(2) The term of the Resident Representative shall commence on the second Monday of January following the date of the election.

(c) To be eligible for the office of Resident Representative, a candidate shall:

(1) be at least twenty-five years of age on the date of the election;

(2) be a citizen of the United States, provided, however, that prior to termination of the Trusteeship Agreement for the former Japanese Mandated Islands, 61 Stat. 3301, the candidate shall be a person defined as a United States citizen or United States national in section 8 of the Schedule on Transitional Matters of the Constitution of the Northern Mariana Islands, as approved by Presidential Proclamation 4534 of October 24, 1977;

(3) have been a resident and domiciliary of the Northern Mariana Islands for at least seven years prior to the date of taking office;

(4) not be, on the date of the election, a candidate for any other office.

(d) Acting pursuant to legislation enacted in accordance with the Constitution of the Northern Mariana Islands, the Government of the Northern Mariana Islands will determine the order of names on the ballot for election of Resident Representative, the method by which a special election to fill a vacancy in the office of Resident Representative shall be conducted, the method by which ties between candidates for the office of Resident Representative shall be resolved, and all other matters of local application pertaining to the election and the office of Resident Representative not otherwise expressly provided for herein.

(e) Until the Rules of the House of Representatives are amended to provide otherwise, the Resident Representative for the Northern Mariana Islands shall receive the same compensation, allowance, and benefits as a Member of the House of Representatives, and shall be entitled to whatever privileges and immunities that are, or hereinafter may be, granted to the nonvoting Delegate from the Territory of Guam.

Sec. 3. Land-grant colleges. (a) Section 506 of Public Law 92-318, 86 Stat. 235, as amended, is further amended to read as follows:

(1) The College of the Virgin Islands, the Community College of American Samoa, the

College of Micronesia, the University of Guam, and an institution in the Northern Mariana Islands designated by the legislature of the Northern Mariana Islands shall be considered land-grant colleges established for the benefit of agriculture and mechanic arts in accordance with the provisions of the Act of July 2, 1862, as amended (7 U.S.C. §§ 301-305, 307-308).

(2) In lieu of extending to the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands (other than the Northern Mariana Islands) those provisions of the Act of July 2, 1862, as amended, relating to donations of public land or land scrip for the endowment and maintenance of colleges for the benefit of agriculture and the mechanic arts, there is authorized to be appropriated $3,000,000 to the Virgin Islands, $3,000,000 to Guam, and $3,000,000 to the Northern Mariana Islands and an equal amount to American Samoa and to the Trust Territory of the Pacific Islands (other than the Northern Mariana Islands). Amounts appropriated pursuant to this section shall be held and considered to have been granted to the Virgin Islands, Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands (other than the Northern Mariana Islands) subject to the provisions of that Act applicable to the proceeds from the sale of land or land scrip.

(b) Subsection (c) of section 1361 of Public Law 96-374, 94 Stat. 1367, is amended to read as follows:

Any provision of any Act of Congress relating to the operation of or provision of assistance to a land-grant college in the Virgin Islands or Guam shall apply to land grant colleges in American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands (other than the Northern Mariana Islands) in the same manner and to the same extent.

(c) Section 5 of the Act of August 30, 1980, c.841, 26 Stat. 417 (the Second Morrill Act), as added by section 506(c) of the Public Law 92-318, 86 Stat. 235, and as amended (7 U.S.C. § 326a), is further amended to read as follows:

> There is authorized to be appropriated annually for payment to the Virgin Islands, American Samoa, Guam, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands (other than the Northern Mariana Islands) the amount they would receive under this Act if they were States. Sums appropriated under this section shall be treated in the same manner and be subject to the same provisions of law, as would be the case if they had been appropriated by the first sentence of this Act.

(d) Section 22 of the Act of June 29, 1935, c.338, 49 Stat. 439, as amended (7 U.S.C. § 329), is further amended--

> (1) by striking out "and Guam" wherever it appears and inserting in lieu thereof "Guam, and the Northern Mariana Islands";
>
> (2) by striking out "$8,100,000" and inserting in lieu thereof "$8,250,000"; and
>
> (3) by striking out "$4,360,000" and inserting in lieu thereof "$4,380,000".

(e) The first sentence of section 3(b)(2) of the Act of May 8, 1914, c.79, 38 Stat. 372, as amended (7 U.S.C. § 343), is further amended by striking out "and Guam" and inserting in lieu thereof "Guam, and the Northern Mariana Islands".

(f) Section 10 of the Act of May 8, 1914, c.79, 38 Stat. 372, as added by section 1(i) of Public Law 87-749, 76 Stat. 745, and as amended (7 U.S.C. § 349), is further amended to read as follows:

> The term "State" means the States of the Union, Puerto Rico, the Virgin Islands, Guam, and the Northern Mariana Islands.

(g) Notwithstanding subsection (4) of section 1404 of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended (7 U.S.C. § 3103(4)), an institution in the Northern Mariana Islands designated by the legislature of the Northern Mariana Islands as a land-grant college, pursuant to section 506(a) of Public Law 92-318 (86 Stat. 235) as amended by section 1 of this Act, shall not be required, in order to qualify as

a "college" or "university" for purposes of the National Agricultural Research, Extension, and Teaching Policy Act of 1977, as amended, to (1) provide an educational program for which a bachelor's degree or any other higher degree is awarded, or (2) be accredited by a nationally recognized accrediting agency or association.

(h) The first sentence of section 3(b)(2) of the Act of August 11, 1955, c.790, 69 Stat. 671, as amended (7 U.S.C. § 361c(b)(2)), is further amended by striking out "and Guam" and inserting in lieu thereof "Guam, and the Northern Mariana Islands".

Sec. 4. Immigration and naturalization. (a)(1) Persons who, on the date of introduction of this Act, are immediate relatives of citizens of the Northern Mariana Islands shall be treated as though they were immediate relatives of citizens of the United States for purposes of the immigration laws of the United States. Any citizen of the Northern Mariana Islands claiming that an alien is entitled to an immediate relative status under section 201(b) of the Immigration and Nationality Act may file a petition with the Attorney General of the United States for such classification.

(2) For purposes of this subsection, "citizens of the Northern Mariana Islands" are those persons defined as United States citizens or United States nationals in section 8 of the Schedule on Transitional Matters of the Constitution of the Northern Mariana Islands, as approved by Presidential Proclamation 4534 of October 24, 1977.

(3) This subsection shall expire upon the establishment of the Commonwealth of the Northern Mariana Islands.

(b)(1) A person who elects to become a national rather than a citizen of the United States pursuant to section 302 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (approved by Public Law 94-241, 90 Stat. 263) may be naturalized subsequently as a citizen of the United States upon compliance with applicable requirements of the Immigration and Nationality Act, except that in petitions for naturalization filed under the provisions of this subsection residence and physical presence within the United States within the meaning of the Immigration and Nationality Act shall include residence and physical presence within the Northern Mariana Islands.

(2) For purposes of the requirements of judicial naturalization of persons eligible for naturalization under this subsection, the Northern Mariana Islands will be deemed to constitute a State as defined in subsection 101(a), paragraph (36) of the Immigration and Nationality Act (8 U.S.C. § 1101(a)(36)).

(3) The courts of record of the Northern Mariana Islands and the District Court for the Northern Mariana Islands shall have jurisdiction to naturalize persons who become eligible under this subsection and who reside within their respective jurisdictions.

Sec. 5. Nominations to the United States Military Academy, the United States Naval Academy, and the United States Air Force Academy. (a) Subsection (a) of section 4342 of title 10, United States Code, is amended by striking the language following clause (10) and substituting therefor the following:

> (11) One cadet from the Northern Mariana Islands, nominated by the Resident Representative to the United States for the Northern Mariana Islands.
>
> Each Senator, Representative, and Delegate in Congress, including the Resident Commissioner from Puerto Rico, and the Resident Representative to the United States for the Northern Mariana Islands are entitled to nominate a principal candidate and nine alternates for each vacancy that is available to him under this section.

(b) Subsection (f) of section 4342 of title 10, United States Code, is amended to read as follows:

> Each candidate for admission nominated under clauses (3)-(7), (9), (10) and (11) of subsection (a) must be domiciled in the State, or in the congressional district, from which he is nominated, or in the District of Columbia, Puerto Rico, American Samoa, Guam, the Virgin Islands, or the Northern Mariana Islands, if nominated from one of those places.

(c) Section 4343 of title 10, United States Code, is amended by substituting "clauses (2)-(9) and (11) of section 4342(a)" for "clauses (2)-(9) of section 4342(a)".

(d) Subsection (a) of section 6954 of title 10, United States Code, is amended by striking the language following clause (10) and substituting therefor the following:

> (11) One from the Northern Mariana Islands, nominated by the Resident Representative to the United States for the Northern Mariana Islands.
>
> Each Senator, Representative, and Delegate in Congress, including the Resident Commissioner from Puerto Rico, and the Resident Representative to the United States for the Northern Mariana Islands are entitled to nominate a principal candidate and nine alternates for each vacancy that is available to him under this section.

(e) Subsection (a) of section 6956 of title 10, United States Code, is amended to read as follows:

> The Secretary of the Navy shall, as soon as possible after the first of June of each year, notify in writing each Senator, Representative, and delegate in Congress, and the Resident Representative to the United States for the Northern Mariana Islands of any vacancy that will exist at the Naval Academy because of graduation in the following year, or that may occur for other reasons, for which the member or delegate or resident representative is entitled to nominate a candidate and nine alternates.

(f) Subsection (e) of section 6956 of title 10, United States Code, is amended by substituting "clause (2)-(9) and (11) of section 6954(a)" for "clauses (2)-(9) of section 6954(a)".

(g) Subsection (b) of section 6958 of title 10, United States Code, is amended to read as follows:

> Each candidate for admission nominated under clauses (3)-(7), (9), (10) and (11) of section 6954(a) must be domiciled in the State, or in the congressional district, from which he is nominated, or in the District of Columbia, Puerto Rico, American Samoa, Guam, the Virgin Islands, or the Northern Mariana Islands, if nominated from one of those places.

(h) Subsection (a) of section 9342 of title 10, United States Code, is amended by striking the language following clause (10) and substituting therefor the following:

> (11) One cadet from the Northern Mariana Islands, nominated by the Resident Representative to the United States for the Northern Mariana Islands.
>
> Each Senator, Representative, and Delegate in Congress, including the Resident Commissioner from Puerto Rico, and the Resident Representative to the United States for the Northern Mariana Islands are entitled to nominate a principal candidate and nine alternates for each vacancy that is available to him under this section.

(i) Subsection (f) of section 9342 of title 10, United States Code, is amended to read as follows:

> Each candidate for admission nominated under clauses (3)-(7), (9), (10) and (11) of subsection (a) must be domiciled in the State, or in the congressional district, from which he is nominated, or in the District of Columbia, Puerto Rico, American Samoa, Guam, the Virgin Islands, or the Northern Mariana Islands, if nominated from one of those places.

(j) Section 9343 of title 10, United States Code is amended by substituting "clauses (2)-(9) and (11) of section 9342(a)" for "clauses (2)-(9) of section 9342(a)".

Sec. 6. Banking laws. (a) Conversion of national bank into bank organized under laws of the Northern Mariana Islands. Subsection (a) of section 1 of the Act of August 17, 1950, c.729, 64 Stat. 455, as amended (12 U.S.C. § 214(a)), is further amended by deleting "or the Virgin Islands," and inserting in lieu thereof "the Virgin Islands, or the Northern Mariana Islands,".

(b) Merger of bank organized under laws of the Northern Mariana Islands into national bank. Subsection (2) of section 3 of the Act of November 7, 1918, c.209, 40 Stat. 1036, as added by section 20 of Public Law 86-230, 73 Stat. 457 (12 U.S.C. § 215b(2)), is amended by inserting immediately after the phrase "the Virgin Islands," the phrase "the Northern Mariana Islands,".

(c) Maximum amounts for federally-insured mortgages in the Northern Mariana Islands. Section 214 of the Act of June 27, 1934, c.847, 48 Stat. 1246, as added by section 2(a) of the Act of April 23, 1949, c.89, 63 Stat. 57, and as amended (12 U.S.C. § 1715d), is further amended by deleting "or Hawaii" each time it appears and inserting in lieu thereof, "the Northern Mariana Islands, or Hawaii".

(d) Insurance of public unit accounts. Subsection (b) of section 401 of the Act of June 27, 1934, c.847, 48 Stat. 1246, as amended (12 U.S.C. § 1724(b)), is further amended by inserting immediately after the phrase "of the Virgin Islands," the phrase "of the Northern Mariana Islands,".

(e) Farm Credit System. Section 5.0 of Public Law 92-181, 85 Stat. 583, as amended by section 502 of Public Law 96-592, 94 Stat. 3437 (12 U.S.C. § 2221), is further amended by inserting the phrase "and the Northern Mariana Islands" after the phrase "the Virgin Islands of the United States" each time it appears.

(f) Abandoned money orders and traveler's checks. The Northern Mariana Islands shall be considered a "State" for purposes of sections 601, 602, and 603 of Public Law 93-495, 88 Stat. 1500 (12 U.S.C. §§ 2501, 2502, and 2503).

(g) National Consumer Cooperative Bank. The fifth sentence of section 101 of Public Law 95-351, 92 Stat. 499, as amended (12 U.S.C. § 3011), is further amended by deleting "and in the Commonwealth of Puerto Rico." and inserting in lieu thereof "in the Commonwealth of Puerto Rico, and in the Northern Mariana Islands.".

(h) Northern Mariana Islands banks' participation in domestic markets. Paragraph (7) of subsection (b) of section 1 of Public Law 95-369, 92 Stat. 67 (12 U.S.C. § 3101(7)), is amended by deleting "or the Virgin Islands," and inserting in lieu thereof "the Virgin Islands, or the Northern Mariana Islands,".

(i) Management interlocks. Subsection (4) of section 205 of Public Law 95-630, 92 Stat. 3641 (12 U.S.C. § 3204(4)), is amended by deleting "or the Virgin Islands" and inserting in lieu thereof "the Virgin Islands, or the Northern Mariana Islands".

(j) Right of financial privacy. Subsection 1 of section 1101 of Public Law 95-630, 92 Stat. 3641 (12 U.S.C.

§ 3401(1)), is amended by deleting "or the Virgin Islands;" and inserting in lieu thereof "the Virgin Islands, or the Northern Mariana Islands;".

Sec. 7. Surveillance of ocean areas. (a) The Congress finds and declares that:

(1) The Northern Mariana Islands, on termination of the Trusteeship Agreement between the United States and the United Nations, will become a self-governing commonwealth in political union with and under the sovereignty of the United States, pursuant to section 101 of the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (as approved by Public Law 94-241, 90 Stat. 263 (1976)).

(2) The United States is obligated to protect the resources of the Northern Mariana Islands, including those resources found within two hundred miles of the coastlines of the Northern Mariana Islands, against unlawful exploitation by nationals or residents of other nations.

(3) The United States, to fulfill its obligation to the people of the Northern Mariana Islands, should increase its surveillance of all ocean areas within two hundred miles of the coastlines of the Northern Mariana Islands. In particular, the United States should ensure that all applicable federal laws, including those governing the exploitation of marine resources, are enforced within those areas.

(b) The Secretary of the Department in which the Coast Guard is operating may, by agreement, on a reimbursable basis or otherwise, utilize the personnel, services, equipment (including aircraft and vessels) and facilities of any other Federal agency, including all elements of the Department of Defense, and of the Government of the Northern Mariana Islands in patrolling waters within two hundred miles of the coastlines of the Northern Mariana Islands.

Sec. 8. Investment companies. Section 6(a)(1) of the Investment Company Act of August 22, 1940, c. 686, 54 Stat. 789 (15 U.S.C. § 80a-6(a)(1)), is amended by inserting "the Northern Mariana Islands," immediately before "the Virgin Islands,".

Sec. 9. Automobile Dealers Day in Court Act. Section 1 of the Act of August 8, 1956, 70 Stat. 1125 (15 U.S.C. § 1221), is amended by adding thereto a new subsection to read as follows:

> (f) The term "Territory" shall include the Northern Mariana Islands.

Sec. 10. Fishery trade officers; Department of Commerce. The Northern Mariana Islands shall be considered as part of the United States for purposes of section 211 of Public Law 96-561, 94 Stat. 3275 (15 U.S.C. § 1511b), and section 3 of the Act of February 14, 1903, c. 552, 32 Stat. 825, as amended (15 U.S.C. § 1512).

Sec. 11. Restrictions on garnishment. Section 302 of Public Law 90-321, 82 Stat. 146 (1968) (15 U.S.C. § 1672), is amended by adding a new subsection, to read:

> (d) The term "State" includes the Northern Mariana Islands; "employers," "employees," and "earnings" within the Northern Mariana Islands are subject to the provisions of this title.

Sec. 12. Fair Credit Reporting Act. Subsection (b) of section 603 of Public Law 90-321, 82 Stat. 146 (1968), as added by section 601 of Public Law 91-508, 84 Stat. 1114 (1970) (15 U.S.C. § 168la(b)), is amended by deleting the final period and adding the following: ", and includes persons in the Northern Mariana Islands.".

Sec. 13. Electronic Fund Transfer Act. Section 903(10) of Public Law 90-321, 82 Stat. 146 (1968), as added by section 2001 of Public Law 95-630, 92 Stat. 3641 (1978) (15 U.S.C. § 1693a(10)), is amended by inserting "the Northern Mariana Islands," immediately after "the Commonwealth of Puerto Rico,".

Sec. 14. Petroleum Marketing Practices Act. Subsection 19 of section 101 and subsection 14 of section 201 of Public Law 95-297, 92 Stat. 322 (1978) (15 U.S.C. §§ 2801(19), 2821(14)), are amended by inserting in each "the Northern Mariana Islands," immediately after "Guam,".

Sec. 15. Fishery conservation and management. (a) Subsection 21 of section 3 of the Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C. § 1802(21)), is further amended to read as follows:

The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, and any other territory or possession of the United States, except the Northern Mariana Islands.

(b) Paragraph (8) of subsection (a) of section 302 of the Magnuson Fishery Conservation and Management Act, as amended (16 U.S.C. § 1852(a)(8)), is further amended to read as follows:

(8) Western Pacific Council.--The Western Pacific Management Council shall consist of the State of Hawaii, American Samoa, and Guam and shall have authority over the fisheries in the Pacific Ocean seaward of such States. The Western Pacific Council shall have 11 voting members, including 7 appointed by the Secretary pursuant to subsection (b)(2) of this section (at least one of whom shall be appointed from each of the following States: Hawaii, American Samoa, and Guam). The Western Pacific Council shall also have a nonvoting observer who shall be appointed by and serve at the pleasure of the Governor of the Northern Mariana Islands.

Sec. 16. Tuna fisheries. (a) The Congress finds and declares the following:

(1) In the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America (approved by Public Law 94-241, 90 Stat. 263 (1976)), the United States agreed to assist in developing the economic resources of the Northern Mariana Islands for the benefit of the inhabitants of those islands.

(2) Tuna in waters adjacent to the Northern Mariana Islands are a valuable and renewable resource, which can contribute to the food supply, economy, and health of the Northern Mariana Islands and of the Nation as a whole.

(3) Foreign fishing vessels catch substantial quantities of tuna in waters adjacent to the Northern Mariana Islands, but neither the Northern Mariana Islands nor the United States derive revenues from tuna caught by those vessels.

(4) Negotiation of an international agreement or agreements to conserve and manage tuna in the Western Pacific Ocean, including those waters adjacent to the Northern Mariana Islands, is in the best interests of the United States and the Northern Mariana Islands.

(b) (1) The Secretary of State shall, upon the request of and in cooperation with the Governor of the Northern Mariana Islands, initiate and conduct negotiations for the purpose of entering into one or more international fisheries agreements for the conservation and management of any highly migratory species of fish within the fishery conservation zone of the Northern Mariana Islands or any appropriate region that includes that fishery conservation zone. The Governor of the Northern Mariana Islands shall be entitled to designate an observer, who shall serve at the pleasure of the Governor, to attend those negotiations.

(2) All payments or other consideration received pursuant to any agreement concluded under the authority granted by paragraph (1) of this subsection and attributable to the taking of fish, or to the right to take fish, by the vessels of foreign nations within the fishery conservation zone of the Northern Mariana Islands shall be paid to the Government of the Northern Mariana Islands.

(3) For purposes of this subsection, the fishery conservation zone of the Northern Mariana Islands shall be defined in relation to the Northern Mariana Islands in the same manner as the fishery conservation zone of the United States is defined in relation to the United States by the Magnuson Fishery Conservation and Management Act.

(4) For purposes of this subsection, the term "highly migratory species" means species of tuna which, in the course of their life cycle, spawn and migrate over great distances in waters of the ocean.

Sec. 17. Federal crimes. (a) Chapter 27 of title 18, United States Code, is amended by:

(1) adding to the table of contents thereof the following:

Sec. 553. Imports to and exports from the Northern Mariana Islands.

and

(2) adding thereto a new section, to read as follows:

§ 553. Imports to and exports from the Northern Mariana Islands.

This chapter and sections 496, 1364, and 1915 of this title shall not apply to the entry of goods or articles into the Northern Mariana Islands nor to the export of goods or articles therefrom.

(b) Subsection (a) of section 42 of title 18, United States Code, is amended by redesignating present paragraph (5) as paragraph (6) and by inserting a new paragraph (5), to read as follows:

Nothing in this subsection shall restrict the importation of species of so-called "flying foxes" or fruit bats of the genus Pteropus into the Northern Mariana Islands.

(c) Chapter 45 of title 18, United States Code, is amended by:

(1) striking from the table of contents thereof the following:

Sec. 969. Exportation of arms, liquors, and narcotics to Pacific Islands.

and

(2) by repealing section 969.

(d) Section 1114 of title 18, United States Code, is amended by inserting after "Guam," the phrase "the Northern Mariana Islands,".

(e) Chapter 61 of title 18, United States Code, is amended by:

(1) adding to the table of contents thereof the following:

Sec. 1308. Certain lotteries in the Northern Mariana Islands.

and

(2) adding a new section thereto, to read as follows:

§ 1308. Certain lotteries in the Northern Mariana Islands.

(a) Nothing in this chapter shall prohibit an advertisement, a list of prizes, or information concerning a qualified lottery conducted in the Northern Mariana Islands in accordance with the laws of the Northern Mariana Islands:

(1) disseminated in a newspaper published in the Northern Mariana Islands, or

(2) broadcast by a radio or television station licensed to a location in the Northern Mariana Islands.

(b) Nothing in this chapter shall prohibit the transportation or mailing to addresses within the Northern Mariana Islands of equipment, tickets, or materials concerning a qualified lottery conducted in the Northern Mariana Islands in accordance with the laws of the Northern Mariana Islands.

(c) For the purposes of this section, "qualified lottery" means a lottery conducted by a nonprofit organization for religious, charitable, educational, or benevolent purposes, in which no part of the gross receipts derived therefrom inures to the benefit of any private shareholder, member, or employee of such organization except as compensation for actual expenses incurred by that person in the conduct of the lottery.

(f) Section 2279 of title 18, United States Code, is amended by adding thereto a new paragraph, to read as follows:

Nothing in this section shall restrict officers or employees of the Government of the Northern

Mariana Islands, in the performance of their official duties, from boarding any vessel about to arrive at any port of the Northern Mariana Islands.

(g) The Northern Mariana Islands shall be considered a "State" for purposes of sections 7, 245(c), 402, 659, 1761(b), and 1901 of title 18, United States Code.

(h) The Northern Mariana Islands shall be considered a "State" or "Territory" for purposes of sections 1715 and 1716 of title 18, United States Code.

Sec. 18. Consolidated grant for higher education. (a) The Secretary of Education shall make available annually to the Northern Mariana Islands a block grant for postsecondary educational needs in the Northern Mariana Islands. The block grant shall be made from appropriations authorized under the Higher Education Act and shall consist of:

(1) an amount equal to the amounts of any funds that would otherwise be allotted to the Northern Mariana Islands or any institution of higher education in the Northern Mariana Islands on the basis of a formula prescribed by the Act, including, but not limited to funds allotted under:

(A) section 119 of the Act, as added by section 101(a) of Public Law 96-374, 94 Stat. 1367 (20 U.S.C. § 1012) (education outreach programs);

(B) section 415A of the Act, as added by section 131(b)(1) of Public Law 92-318, 86 Stat. 235, and as amended (20 U.S.C. § 1070c) (State student incentives); and

(C) sections 419 and 420 of the Act, as added by section 1001(a) of Public Law 92-318, 86 Stat. 235, as amended (20 U.S.C. §§ 1070e and 1070e-1) (assistance to institutions of higher education).

(2) thirty-three hundredths of one percent of any funds appropriated by Congress under the following authorizations:

(A) section 119 of the Act, as added by section 101(a) of Public Law 96-374, 94 Stat. 1367 (20 U.S.C. § 1019) (education outreach programs), to the extent of the ten per centum of such funds apportioned for discretionary grants or contracts pursuant to section 116 of the Act, as added by section 101(a) of Public Law 96-374 (20 U.S.C. § 1016);

(B) sections 201 and 347 of the Act, as added by sections 201 and 301 of Public Law 96-374, 94 Stat. 1367 (20 U.S.C. §§ 1021 and 1069c) (college and research library assistance and library training research, strengthening institutions, and aid to institutions with special needs);

(C) section 417A of the Act, as added by section 131(b)(1) of Public Law 92-318, 86 Stat. 235, and as amended (20 U.S.C. § 1070d) (special programs for students from disadvantaged backgrounds);

(D) section 531 of the Act, as added by section 153 of Public Law 94-482, 90 Stat. 2081, and as amended (20 U.S.C. § 1119) (teacher training programs);

(E) sections 546, 607, and 613 of the Act, as added by sections 505(a) and 601(a) of Public Law 96-374, 94 Stat. 1367 (20 U.S.C. §§ 1119b-5, 1127, and 1130b) (training for elementary and secondary school teachers to teach handicapped children, and international education programs);

(F) section 702 of the Act, as added by section 701 of Public Law 96-374, 94 Stat. 1367 (20 U.S.C. § 1132a-1), but only to the extent it authorizes appropriation of grant funds (grants for the construction, reconstruction, and renovation of undergraduate and graduate academic facilities);

(G) section 801 of the Act, as added by section 129(b) of Public Law 94-482, 90 Stat. 2081, and as amended (20 U.S.C. § 1133) (cooperative education);

(H) section 901 of the Act, as added by section 181(a) of Public Law 92-318, 86 Stat. 235, and as amended (20 U.S.C. § 1134) (grants to institutions of higher education); and

(I) sections 942, 953, 1005, and 1102 of the Act, as added by sections 904, 905, 1001(a) and 1101 of Public Law 96-374, 94 Stat. 1367 (20 U.S.C. §§ 1134m, 1134p, 1135a-3, and 1136a) (assistance for training in the legal profession, law school clinical experience programs, fund for the improvement of postsecondary education, and urban grant university program).

If all jurisdictions entitled to receive funds appropriated pursuant to the authorizations listed in subsection (b) of this section are entitled to receive a minimum amount of funds pursuant to any such authorization and that minimum amount is greater than thirty-three hundredths of one percent of that authorization, then that minimum amount shall be substituted for thirty-three hundredths of one percent for each such authorization in determining the total amount of the block grant.

(b) The block grant authorized under subsection (a) of this section shall be made available directly to a college or community college established or to be established by the Government of the Northern Mariana

Islands and designated by the Board of Education of the Northern Mariana Islands as the recipient of the block grant for purposes of meeting postsecondary educational needs in the Northern Mariana Islands. The block grant shall not be restricted in use to only those uses permitted under the Higher Education Act. Nothing in this section shall preclude the Secretary of Education from providing adequate procedures for accounting for, auditing, evaluating, and reviewing any programs or activities receiving benefits from the block grant authorized under subsection (a) of this section or from providing technical assistance otherwise available under the Higher Education Act.

(c) The institution designated as recipient of the block grant pursuant to subsection (b) of this section shall receive the block grant without regard to whether it is accredited. No funding otherwise available under the Act shall be denied the institution because it lacks accreditation. The Secretary of Education shall waive any requirement for matching funds otherwise required by the Act to be provided by the Northern Mariana Islands or by any institution of higher education in the Northern Mariana Islands.

(d) Nothing in this section shall preclude the Northern Mariana Islands, or any institution of higher education in the Northern Mariana Islands, from receiving assistance under the Higher Education Act if that assistance is available under a program or programs not included in determining the amount of the block grant available to the Northern Mariana Islands pursuant to subsection (a) of this section.

(e) The Higher Education Act or "the Act", as used herein, means the Higher Education Act of 1965, 79 Stat. 1219, as amended (20 U.S.C. §§ 1001 et seq.).

(f) Any funds required to be made available under this section shall remain available until expended.

Sec. 19. Special temporary passports. (a) The Secretary of State or persons designated by the Secretary of State shall issue special United States passports to citizens of the Northern Mariana Islands, notwithstanding section 4076 of the Revised Statutes of 1878, as amended (22 U.S.C. § 212). These passports shall recite the privilege of citizens of the Northern Mariana Islands to enter and to reside and be employed in the United States, and to enjoy the diplomatic and consular protection of the United States in foreign countries.

(b) For purposes of this section, "citizens of the Northern Mariana Islands" are those persons defined as United States citizens or United States nationals in section 8 of the Schedule on Transitional Matters of the Constitution of the Northern Mariana Islands, as approved by Presidential Proclamation 4534 of October 24, 1977.

(c) This section shall expire upon the establishment of the Commonwealth of the Northern Mariana Islands.

Sec. 20. Northern Mariana Islands financial institutions as federal depositaries. Subsection (b) of section 3303 of title 31, United States Code, is amended by deleting the phrase "and in territories and possessions of the United States" and inserting in lieu thereof ", in territories and possessions of the United States, and in the Northern Mariana Islands".

Sec. 21. Issuance of substitute checks. Subsection (c) of section 3331 of title 31, United States Code, is amended by inserting the phrase "or the Northern Mariana Islands" immediately after the phrase "a territory or possession of the United States".

Sec. 22. Federal employee allotments to Northern Mariana Islands credit unions. Subsection (a) of section 3332 of title 31, United States Code, is amended by adding thereto the following sentence:

> "State", for purposes of this subsection, includes the Northern Mariana Islands.

Sec. 23. Public participation in block grant proposals. Subsection (2) of section 7302 of title 31, United States Code, is amended by deleting the phrase "and territories and possessions of the United States." and inserting in lieu thereof the phrase ", territories and possessions of the United States, and the Northern Mariana Islands.".

Sec. 24. Rivers and harbors. The applicability of the Act of March 3, 1899, c.425, 30 Stat. 1151, as amended (33 U.S.C. §§ 401 et seq.), to the Northern Mariana Islands is confirmed.

Sec. 25. (a) Judicial venue under the Clean Water Act. (a) Subsection (n) of section 311 of the Act of June 30, 1948, c.758, 62 Stat. 1155, as added by section 2 of Public Law 92-500, 86 Stat. 816, and as amended (33 U.S.C. § 1321(n)), is further amended:

(1) by striking "Trust Territory of the Pacific Islands" wherever it appears and inserting in lieu thereof "Trust Territory of the Pacific Islands (other than the Northern Mariana Islands)"; and

(2) by inserting a new sentence after the second sentence thereof, to read as follows:

> In the case of the Northern Mariana Islands, such actions may be brought in the District Court for the Northern Mariana Islands.

(b) Subsection (m) of section 312 of the Act of June 30, 1948, c.758, 62 Stat. 1155, as added by section 2 of Public Law 92-500, 86 Stat. 816, and as amended (33 U.S.C. § 1322(m)), is further amended:

(1) by striking "Trust Territory of the Pacific Islands" wherever it appears and inserting in lieu thereof "Trust Territory of the Pacific Islands (other than the Northern Mariana Islands)"; and

(2) by inserting a new sentence after the first sentence thereof, to read as follows:

> In the case of the Northern Mariana Islands, such actions may be brought in the District Court for the Northern Mariana Islands.

Sec. 26. Judicial venue under the Ocean Dumping Act. Subsection (g) of section 3 of Public Law 92-532, 86 Stat. 1052, as amended (33 U.S.C. § 1402(g)), is further amended:

(1) by inserting after "Puerto Rico," the following: "the District Court for the Northern Mariana Islands,"; and

(2) by inserting after "Trust Territory of the Pacific Islands" the following: "(other than the Northern Mariana Islands)".

Sec. 27. Judicial venue under the Ocean Thermal Energy Conversion Act. Subsection (c) of section 303 of Public Law 96-320, 94 Stat. 974 (42 U.S.C. § 9153(c)), is amended by deleting the period after "District of Hawaii"

and inserting in lieu thereof ", and in the case of the Northern Mariana Islands, the appropriate court is the District Court for the Northern Mariana Islands.".

Sec. 28. Nonprofit lottery mailings. Section 3005 of title 39, United States Code, is amended by adding a new subsection (f) thereto, to read as follows:

> (1) Nothing in subsection (a) of this section shall prohibit the mailing to addresses within the Northern Mariana Islands of equipment, tickets, or materials concerning a qualified lottery conducted in the Northern Mariana Islands in accordance with the laws of the Northern Mariana Islands.
>
> (2) For the purposes of this section, "qualified lottery" means a lottery conducted by a nonprofit organization for religious, charitable, educational, or benevolent purposes, in which no part of the gross receipts derived therefrom inures to the benefit of any private shareholder, member, or employee of such organization except as compensation for actual expenses incurred by that person in the conduct of the lottery.

Sec. 29. Medicaid. Section 1902(j) of the Social Security Act, as amended (42 U.S.C. § 1396a(j)) is further amended by inserting before "American Samoa" each place it occurs "the Northern Mariana Islands and".

Sec. 30. Submerged lands. (a) Subject to valid existing rights, the United States releases, relinquishes, and conveys to the Commonwealth of the Northern Mariana Islands any and all right, title, and interest it may have in submerged lands within the boundaries of the Commonwealth of the Northern Mariana Islands, to be administered in trust for the benefit of the people thereof.

(b) For purposes of this section,

> (1) "submerged lands" shall include:
>
> (A) all lands permanently or periodically covered by tidal waters up to but not above the ordinary high water mark as heretofore or hereafter

modified by accretion, erosion, and reliction, and seaward to a line three geographical miles distant from the coastlines of the Commonwealth of the Northern Mariana Islands.

(B) all filled in, made, or reclaimed lands which were formerly lands described in subparagraph (A) of this paragraph; and

(C) all improvements on and all natural resources on or within lands described in subparagraphs (A) and (B) of this paragraph.

(2) "Covenant" shall mean the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, as approved by Public law 94-241, 90 Stat. 263 (1976).

(c) There are excepted from the transfer made by subsection (a) of this section any and all submerged lands leased to the Government of the United States pursuant to sections 802 and 803 of the Covenant for so long as such lands are leased.

(d) Nothing contained in this section shall affect such rights, if any, the Commonwealth of the Northern Mariana Islands may have in the seabed and its subsoil, and their natural resources, more than three geographical miles distant from the coastlines of the Commonwealth of the Northern Mariana Islands.

(e) This section shall become effective on establishment of the Commonwealth of the Northern Mariana Islands pursuant to sections 101 and 1003(c) of the Covenant.

Sec. 31. Government depository libraries. (a) Section 1905 of title 44, United States Code, is amended:

(1) by deleting, in the first sentence, the phrase "and the Virgin Islands," and inserting in lieu thereof "the Virgin Islands, and the Northern Mariana Islands,"; and

(2) by amending the last sentence to read as follows:

The Commissioner of the District of Columbia may designate two depository libraries in the District of Columbia, the Governor of Guam, the Governor of American Samoa, and the Governor of the Northern Mariana Islands may each designate one depository library in Guam, American Samoa, and the Northern Mariana Islands, respectively, and the Governor of the Virgin Islands may designate one depository library on the island of Saint Thomas and one on the island of Saint Croix.

(b) Section 1909 of title 44, United States Code, is amended by inserting after the phrase "American Samoa," each time it appears the phrase "the Northern Mariana Islands,".

Sec. 32. Enforcement of federal laws in the Northern Mariana Islands. (a) The Governor of the Northern Mariana Islands is authorized to enforce or execute in the Northern Mariana Islands any federal law applicable to the Northern Mariana Islands, provided, however, that, in enforcing or executing any such federal law, the authority exercised by the Governor shall be subject to any direction or control exercised by the federal agency principally charged with the enforcement or execution of that law or, if no federal agency is so charged, by the United States Department of Justice.

(b) The authority granted to the Governor of the Northern Mariana Islands by subsection (a) of this section may be delegated by the Governor to any officer or employee of the Government of the Northern Mariana Islands, either directly, or indirectly by one or more redelegations of authority.

(c) Any agency of the Federal Government is authorized to provide financial and technical assistance to the Government of the Northern Mariana Islands in enforcing or executing within the Northern Mariana Islands federal laws normally enforced or executed by that agency. Any program for financial and technical assistance as authorized by this section shall be developed in cooperation with the Government of the Northern Mariana Islands and shall be covered by a memorandum of

understanding agreed to by the Government of the Northern Mariana Islands and the concerned agency.

* * *

APPENDIX

Public Law 94-241
94th Congress

Joint Resolution

To approve the "Covenant To Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America", and for other purposes.

Mar. 24, 1976
[H.J. Res. 549]

Whereas the United States is the administering authority of the Trust Territory of the Pacific Islands under the terms of the trusteeship agreement for the former Japanese-mandated islands entered into by the United States with the Security Council of the United Nations on April 2, 1947, and approved by the United States on July 18, 1947; and

48 USC 1681 note.

Whereas the United States, in accordance with the trusteeship agreement and the Charter of the United Nations, has assumed the obligation to promote the development of the peoples of the trust territory toward self-government or independence as may be appropriate to the particular circumstances of the trust territory and its peoples and the freely expressed wishes of the peoples concerned; and

Whereas the United States, in response to the desires of the people of the Northern Mariana Islands clearly expressed over the past twenty years through public petition and referendum, and in response to its own obligations under the trusteeship agreement to promote self-determination, entered into political status negotiations with representatives of the people of the Northern Mariana Islands; and

Whereas, on February 15, 1975, a "Covenant to Establish A Commonwealth of the Northern Mariana Islands in Political Union with the United States of America" was signed by the Marianas Political Status Commission for the people of the Northern Mariana Islands and by the President's Personal Representative, Ambassador F. Haydn Williams for the United States of America, following which the covenant was approved by the unanimous vote of the Mariana Islands District Legislature on February 20, 1975 and by 78.8 per centum of the people of the Northern Mariana Islands voting in a plebiscite held on June 17, 1975: Now be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America, the text of which is as follows, is hereby approved.

Covenant to Establish a Commonwealth of the Northern Mariana Islands in Political Union with the United States of America. Congressional approval. 48 USC 1681 note.

"COVENANT TO ESTABLISH A COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS IN POLITICAL UNION WITH THE UNITED STATES OF AMERICA

"Whereas, the Charter of the United Nations and the Trusteeship Agreement between the Security Council of the United Nations and the United States of America guarantee to the people of the Northern Mariana Islands the right freely to express their wishes for self-government or independence; and

"Whereas, the United States supports the desire of the people of the Northern Mariana Islands to exercise their inalienable right of self-determination; and

"Whereas, the people of the Northern Mariana Islands and the people of the United States share the goals and values found in the American system of government based upon the principles of government by the consent of the governed, individual freedom and democracy; and

"Whereas, for over twenty years, the people of the Northern Mariana Islands, through public petition and referendum, have clearly expressed their desire for political union with the United States;

"Now, therefore, the Marianas Political Status Commission, being the duly appointed representative of the people of the Northern Mariana Islands, and the Personal Representative of the President of the United States have entered into this Covenant in order to establish a self-governing commonwealth for the Northern Mariana Islands within the American political system and to define the future relationship between the Northern Mariana Islands and the United States. This Covenant will be mutually binding when it is approved by the United States, by the Mariana Islands District Legislature and by the people of the Northern Mariana Islands in a plebiscite, constituting on their part a sovereign act of self-determination.

"ARTICLE I

"POLITICAL RELATIONSHIP

"SECTION 101. The Northern Mariana Islands upon termination of the Trusteeship Agreement will become a self-governing commonwealth to be known as the 'Commonwealth of the Northern Mariana Islands', in political union with and under the sovereignty of the United States of America.

"SECTION 102. The relations between the Northern Mariana Islands and the United States will be governed by this Covenant which, together with those provisions of the Constitution, treaties and laws of the United States applicable to the Northern Mariana Islands, will be the supreme law of the Northern Mariana Islands.

"SECTION 103. The people of the Northern Mariana Islands will have the right of local self-government and will govern themselves with respect to internal affairs in accordance with a Constitution of their own adoption.

"SECTION 104. The United States will have complete responsibility for and authority with respect to matters relating to foreign affairs and defense affecting the Northern Mariana Islands.

"SECTION 105. The United States may enact legislation in accordance with its constitutional processes which will be applicable to the Northern Mariana Islands, but if such legislation cannot also be made applicable to the several States the Northern Mariana Islands must be specifically named therein for it to become effective in the Northern Mariana Islands. In order to respect the right of self-government guaranteed by this Covenant the United States agrees to limit the exercise of that authority so that the fundamental provisions of this Covenant, namely Articles I, II and III and Sections 501 and 805, may be modified only with the consent of the Government of the United States and the Government of the Northern Mariana Islands.

"ARTICLE II

"CONSTITUTION OF THE NORTHERN MARIANA ISLANDS

"SECTION 201. The people of the Northern Mariana Islands will formulate and approve a Constitution and may amend their Constitution pursuant to the procedures provided therein.

"SECTION 202. The Constitution will be submitted to the Government of the United States for approval on the basis of its consistency with this Covenant and those provisions of the Constitution, treaties and laws of the United States to be applicable to the Northern Mariana Islands. The Constitution will be deemed to have been approved six months after its submission to the President on behalf of the Government of the United States unless earlier approved or disapproved. If disapproved the Constitution will be returned and will be resubmitted in accordance with this Section. Amendments to the Constitution may be made by the people of the Northern Mariana Islands without approval by the Government of the United States, but the courts established by the Constitution or laws of the United States will be competent to determine whether the Constitution and subsequent amendments thereto are consistent with this Covenant and with those provisions of the Constitution, treaties and laws of the United States applicable to the Northern Mariana Islands. Submittal to U.S. for approval.

"SECTION 203. (a) The Constitution will provide for a republican form of government with separate executive, legislative and judicial branches, and will contain a bill of rights.

"(b) The executive power of the Northern Mariana Islands will be vested in a popularly elected Governor and such other officials as the Constitution or laws of the Northern Mariana Islands may provide.

"(c) The legislative power of the Northern Mariana Islands will be vested in a popularly elected legislature and will extend to all rightful subjects of legislation. The Constitution of the Northern Mariana Islands will provide for equal representation for each of the chartered municipalities of the Northern Mariana Islands in one house of a bicameral legislature, notwithstanding other provisions of this Covenant or those provisions of the Constitution or laws of the United States applicable to the Northern Mariana Islands.

"(d) The judicial power of the Northern Mariana Islands will be vested in such courts as the Constitution or laws of the Northern Mariana Islands may provide. The Constitution or laws of the Northern Mariana Islands may vest in such courts jurisdiction over all causes in the Northern Mariana Islands over which any court established by the Constitution or laws of the United States does not have exclusive jurisdiction.

"SECTION 204. All members of the legislature of the Northern Mariana Islands and all officers and employees of the Government of the Northern Mariana Islands will take an oath or affirmation to support this Covenant, those provisions of the Constitution, treaties and laws of the United States applicable to the Northern Mariana Islands, and the Constitution and laws of the Northern Mariana Islands.

"ARTICLE III

"CITIZENSHIP AND NATIONALITY

"SECTION 301. The following persons and their children under the age of 18 years on the effective date of this Section, who are not citizens or nationals of the United States under any other provision of law, and who on that date do not owe allegiance to any foreign state, are

declared to be citizens of the United States, except as otherwise provided in Section 302:

"(a) all persons born in the Northern Mariana Islands who are citizens of the Trust Territory of the Pacific Islands on the day preceding the effective date of this Section, and who on that date are domiciled in the Northern Mariana Islands or in the United States or any territory or possession thereof;

"(b) all persons who are citizens of the Trust Territory of the Pacific Islands on the day preceding the effective date of this Section, who have been domiciled continuously in the Northern Mariana Islands for at least five years immediately prior to that date, and who, unless under age, registered to vote in elections for the Marianas Islands District Legislature or for any municipal election in the Northern Mariana Islands prior to January 1, 1975; and

"(c) all persons domiciled in the Northern Mariana Islands on the day preceding the effective date of this Section, who, although not citizens of the Trust Territory of the Pacific Islands, on that date have been domiciled continuously in the Northern Mariana Islands beginning prior to January 1, 1974.

"SECTION 302. Any person who becomes a citizen of the United States solely by virtue of the provisions of Section 301 may within six months after the effective date of that Section or within six months after reaching the age of 18 years, whichever date is the later, become a national but not a citizen of the United States by making a declaration under oath before any court established by the Constitution or laws of the United States or any court of record in the Commonwealth in the form as follows:

"'I ———— being duly sworn, hereby declare my intention to be a national but not a citizen of the United States.'"

"SECTION 303. All persons born in the Commonwealth on or after the effective date of this Section and subject to the jurisdiction of the United States will be citizens of the United States at birth.

"SECTION 304. Citizens of the Northern Mariana Islands will be entitled to all privileges and immunities of citizens in the several States of the United States.

"ARTICLE IV

"JUDICIAL AUTHORITY

District Court for the Northern Mariana Islands. Establishment

"SECTION 401. The United States will establish for and within the Northern Mariana Islands a court of record to be known as the 'District Court for the Northern Mariana Islands'. The Northern Mariana Islands will constitute a part of the same judicial circuit of the United States as Guam.

"SECTION 402. (a) The District Court for the Northern Mariana Islands will have the jurisdiction of a district court of the United States, except that in all causes arising under the Constitution, treaties or laws of the United States it will have jurisdiction regardless of the sum or value of the matter in controversy.

"(b) The District Court will have original jurisdiction in all causes in the Northern Mariana Islands not described in Subsection (a) jurisdiction over which is not vested by the Constitution or laws of the Northern Mariana Islands in a court or courts of the Northern Mariana Islands. In causes brought in the District Court solely on

the basis of this subsection, the District Court will be considered a court of the Northern Mariana Islands for the purposes of determining the requirements of indictment by grand jury or trial by jury.

"(c) The District Court will have such appellate jurisdiction as the Constitution or laws of the Northern Mariana Islands may provide. When it sits as an appellate court, the District Court will consist of three judges, at least one of whom will be a judge of a court of record of the Northern Mariana Islands.

"SECTION 403. (a) The relations between the courts established by the Constitution or laws of the United States and the courts of the Northern Mariana Islands with respect to appeals, certiorari, removal of causes, the issuance of writs of habeas corpus and other matters or proceedings will be governed by the laws of the United States pertaining to the relations between the courts of the United States and the courts of the several States in such matters and proceedings, except as otherwise provided in this Article; provided that for the first fifteen years following the establishment of an appellate court of the Northern Mariana Islands the United States Court of Appeals for the judicial circuit which includes the Northern Mariana Islands will have jurisdiction of appeals from all final decisions of the highest court of the Northern Mariana Islands from which a decision could be had in all cases involving the Constitution, treaties or laws of the United States, or any authority exercised thereunder, unless those cases are reviewable in the District Court for the Northern Mariana Islands pursuant to Subsection 402(c).

"(b) Those portions of Title 28 of the United States Code which apply to Guam or the District Court of Guam will be applicable to the Northern Mariana Islands or the District Court for the Northern Mariana Islands, respectively, except as otherwise provided in this Article.

"ARTICLE V

"APPLICABILITY OF LAWS

"SECTION 501. (a) To the extent that they are not applicable of their own force, the following provisions of the Constitution of the United States will be applicable within the Northern Mariana Islands as if the Northern Mariana Islands were one of the several States: Article I, Section 9, Clauses 2, 3, and 8; Article I, Section 10, Clauses 1 and 3; Article IV, Section 1 and Section 2, Clauses 1 and 2; Amendments 1 through 9, inclusive; Amendment 13; Amendment 14, Section 1; Amendment 15; Amendment 19; and Amendment 26; provided, however, that neither trial by jury nor indictment by grand jury shall be required in any civil action or criminal prosecution based on local law, except where required by local law. Other provisions of or amendments to the Constitution of the United States, which do not apply of their own force within the Northern Mariana Islands, will be applicable within the Northern Mariana Islands only with approval of the Government of the Northern Mariana Islands and of the Government of the United States. USC prec. title 1.

"(b) The applicability of certain provisions of the Constitution of the United States to the Northern Mariana Islands will be without prejudice to the validity of and the power of the Congress of the United States to consent to Sections 203, 506 and 805 and the proviso in Subsection (a) of this Section.

"SECTION 502. (a) The following laws of the United States in existence on the effective date of this Section and subsequent amendments to such laws will apply to the Northern Mariana Islands, except as otherwise provided in this Covenant:

"(1) those laws which provide federal services and financial assistance programs and the federal banking laws as they apply to Guam; Section 228 of Title II and Title XVI of the Social Security Act as it applies to the several States; the Public Health Service Act as it applies to the Virgin Islands; and the Micronesian Claims Act as it applies to the Trust Territory of the Pacific Islands;

42 USC 428, 1381.
42 USC 201 note.
50 USC app. 2018.

"(2) those laws not described in paragraph (1) which are applicable to Guam and which are of general application to the several States as they are applicable to the several States; and

"(3) those laws not described in paragraph (1) or (2) which are applicable to the Trust Territory of the Pacific Islands, but not their subsequent amendments unless specifically made applicable to the Northern Mariana Islands, as they apply to the Trust Territory of the Pacific Islands until termination of the Trusteeship Agreement, and will thereafter be inapplicable.

"(b) The laws of the United States regarding coastal shipments and the conditions of employment, including the wages and hours of employees, will apply to the activities of the United States Government and its contractors in the Northern Mariana Islands.

"SECTION 503. The following laws of the United States, presently inapplicable to the Trust Territory of the Pacific Islands, will not apply to the Northern Mariana Islands except in the manner and to the extent made applicable to them by the Congress by law after termination of the Trusteeship Agreement:

"(a) except as otherwise provided in Section 506, the immigration and naturalization laws of the United States;

"(b) except as otherwise provided in Subsection (b) of Section 502, the coastwise laws of the United States and any prohibition in the laws of the United States against foreign vessels landing fish or unfinished fish products in the United States; and

"(c) the minimum wage provisions of Section 6, Act of June 25, 1938, 52 Stat. 1062, as amended.

29 USC 206.

Commission on Federal Laws.

"SECTION 504. The President will appoint a Commission on Federal Laws to survey the laws of the United States and to make recommendations to the United States Congress as to which laws of the United States not applicable to the Northern Mariana Islands should be made applicable and to what extent and in what manner, and which applicable laws should be made inapplicable and to what extent and in what manner. The Commission will consist of seven persons (at least four of whom will be citizens of the Trust Territory of the Pacific Islands who are and have been for at least five years domiciled continuously in the Northern Mariana Islands at the time of their appointments) who will be representative of the federal, local, private and public interests in the applicability of laws of the United States to the Northern Mariana Islands. The Commission will make its final report and recommendations to the Congress within one year after the termination of the Trusteeship Agreement, and before that time will make such interim reports and recommendations to the Congress as it considers appropriate to facilitate the transition of the Northern Mariana Islands to its new political status. In formulating its recommendations the Commission will take into consideration the potential effect of each law on local conditions within the Northern Mariana Islands,

Membership.

Reports to Congress.

the policies embodied in the law and the provisions and purposes of this Covenant. The United States will bear the cost of the work of the Commission.

"SECTION 505. The laws of the Trust Territory of the Pacific Islands, of the Mariana Islands District and its local municipalities, and all other Executive and District orders of a local nature applicable to the Northern Mariana Islands on the effective date of this Section and not inconsistent with this Covenant or with those provisions of the Constitution, treaties or laws of the United States applicable to the Northern Mariana Islands will remain in force and effect until and unless altered by the Government of the Northern Mariana Islands.

"SECTION 506. (a) Notwithstanding the provisions of Subsection 503(a), upon the effective date of this Section the Northern Mariana Islands will be deemed to be a part of the United States under the Immigration and Nationality Act, as amended for the following purposes only, and the said Act will apply to the Northern Mariana Islands to the extent indicated in each of the following Subsections of this Section. 8 USC 1101 note.

"(b) With respect to children born abroad to United States citizen or non-citizen national parents permanently residing in the Northern Mariana Islands the provisions of Sections 301 and 308 of the said Act will apply. 8 USC 1401, 1408.

"(c) With respect to aliens who are 'immediate relatives' (as defined in Subsection 201(b) of the said Act) of United States citizens who are permanently residing in the Northern Mariana Islands all the provisions of the said Act will apply, commencing when a claim is made to entitlement to 'immediate relative' status. A person who is certified by the Government of the Northern Mariana Islands both to have been a lawful permanent resident of the Northern Mariana Islands and to have had the 'immediate relative' relationship denoted herein on the effective date of this Section will be presumed to have been admitted to the United States for lawful permanent residence as of that date without the requirement of any of the usual procedures set forth in the said Act. For the purpose of the requirements of judicial naturalization, the Northern Mariana Islands will be deemed to constitute a State as defined in Subsection 101(a) paragraph (36) of the said Act. The Courts of record of the Northern Mariana Islands and the District Court for the Northern Mariana Islands will be included among the courts specified in Subsection 310(a) of the said Act and will have jurisdiction to naturalize persons who become eligible under this Section and who reside within their respective jurisdictions. "Immediate relatives." 8 USC 1151. 8 USC 1101. 8 USC 1421.

"(d) With respect to persons who will become citizens or nationals of the United States under Article III of this Covenant or under this Section the loss of nationality provisions of the said Act will apply.

"ARTICLE VI

"REVENUE AND TAXATION

"SECTION 601. (a) The income tax laws in force in the United States will come into force in the Northern Mariana Islands as a local territorial income tax on the first day of January following the effective date of this Section, in the same manner as those laws are in force in Guam.

"(b) Any individual who is a citizen or a resident of the United States, of Guam, or of the Northern Mariana Islands (including a

national of the United States who is not a citizen), will file only one income tax return with respect to his income, in a manner similar to the provisions of Section 935 of Title 26, United States Code.

"(c) References in the Internal Revenue Code to Guam will be deemed also to refer to the Northern Mariana Islands, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof or of this Covenant.

Additional taxes levied by Island government.

"SECTION 602. The Government of the Northern Mariana Islands may by local law impose such taxes, in addition to those imposed under Section 601, as it deems appropriate and provide for the rebate of any taxes received by it, except that the power of the Government of the Northern Mariana Islands to rebate collections of the local territorial income tax received by it will be limited to taxes on income derived from sources within the Northern Mariana Islands.

"SECTION 603. (a) The Northern Mariana Islands will not be included within the customs territory of the United States.

"(b) The Government of the Northern Mariana Islands may, in a manner consistent with the international obligations of the United States, levy duties on goods imported into its territory from any area outside the customs territory of the United States and impose duties on exports from its territory.

"(c) Imports from the Northern Mariana Islands into the customs territory of the United States will be subject to the same treatment as imports from Guam into the customs territory of the United States.

"(d) The Government of the United States will seek to obtain from foreign countries favorable treatment for exports from the Northern Mariana Islands and will encourage other countries to consider the Northern Mariana Islands a developing territory.

"SECTION 604. (a) The Government of the United States may levy excise taxes on goods manufactured, sold or used or services rendered in the Northern Mariana Islands in the same manner and to the same extent as such taxes are applicable within Guam.

"(b) The Government of the Northern Mariana Islands will have the authority to impose excise taxes upon goods manufactured, sold or used or services rendered within its territory or upon goods imported into its territory, provided that such excise taxes imposed on goods imported into its territory will be consistent with the international obligations of the United States.

U.S. property exclusion from customs duties.

"SECTION 605. Nothing in this Article will be deemed to authorize the Government of the Northern Mariana Islands to impose any customs duties on the property of the United States or on the personal property of military or civilian personnel of the United States Government or their dependents entering or leaving the Northern Mariana Islands pursuant to their contract of employment or orders assigning them to or from the Northern Mariana Islands or to impose any taxes on the property, activities or instrumentalities of the United States which one of the several States could not impose; nor will any provision of this Article be deemed to affect the operation of the Soldiers and Sailors Civil Relief Act of 1940, as amended, which will be applicable to the Northern Mariana Islands as it is applicable to Guam.

50 USC app. 501.

Northern Mariana Islands Social Security Retirement Fund, transfer to U.S. Treasury.

"SECTION 606. (a) Not later than at the time this Covenant is approved, that portion of the Trust Territory Social Security Retirement Fund attributable to the Northern Mariana Islands will be transferred to the Treasury of the United States, to be held in trust as a

separate fund to be known as the 'Northern Mariana Islands Social Security Retirement Fund'. This fund will be administered by the United States in accordance with the social security laws of the Trust Territory of the Pacific Islands in effect at the time of such transfer, which may be modified by the Government of the Northern Mariana Islands only in a manner which does not create any additional differences between the social security laws of the Trust Territory of the Pacific Islands and the laws described in Subsection (b). The United States will supplement such fund if necessary to assure that persons receive benefits therefrom comparable to those they would have received from the Trust Territory Social Security Retirement Fund under the laws applicable thereto on the day preceding the establishment of the Northern Mariana Islands Social Security Retirement Fund, so long as the rate of contributions thereto also remains comparable. Administration.

"(b) Those laws of the United States which impose excise and self-employment taxes to support or which provide benefits from the United States Social Security System will upon termination of the Trusteeship Agreement or such earlier date as may be agreed to by the Government of the Northern Mariana Islands and the Government of the United States become applicable to the Northern Mariana Islands as they apply to Guam.

"(c) At such time as the laws described in Subsection (b) become applicable to the Northern Mariana Islands:

"(1) the Northern Mariana Islands Social Security Retirement Fund will be transferred into the appropriate Federal Social Security Trust Funds;

"(2) prior contributions by or on behalf of persons domiciled in the Northern Mariana Islands to the Trust Territory Social Security Retirement Fund or the Northern Mariana Islands Social Security Retirement Fund will be considered to have been made to the appropriate Federal Social Security Trust Funds for the purpose of determining eligibility of those persons in the Northern Mariana Islands for benefits under those laws; and

"(3) persons domiciled in the Northern Mariana Islands who are eligible for or entitled to social security benefits under the laws of the Trust Territory of the Pacific Islands or of the Northern Mariana Islands will not lose their entitlement and will be eligible for or entitled to benefits under the laws described in Subsection (b).

"SECTION 607. (a) All bonds or other obligations issued by the Government of the Northern Mariana Islands or by its authority will be exempt, as to principal and interest, from taxation by the United States, or by any State, territory or possession of the United States, or any political subdivision of any of them. Bonds and other obligations, exemption.

"(b) During the initial seven year period of financial assistance provided for in Section 702, and during such subsequent periods of financial assistance as may be agreed, the Government of the Northern Mariana Islands will authorize no public indebtedness (other than bonds or other obligations of the Government payable solely from revenues derived from any public improvement or undertaking) in excess of ten percentum of the aggregate assessed valuation of the property within the Northern Mariana Islands.

"ARTICLE VII

"UNITED STATES FINANCIAL ASSISTANCE

"SECTION 701. The Government of the United States will assist the Government of the Northern Mariana Islands in its efforts to achieve a progressively higher standard of living for its people as part of the American economic community and to develop the economic resources needed to meet the financial responsibilities of local self-government. To this end, the United States will provide direct multi-year financial support to the Government of the Northern Mariana Islands for local government operations, for capital improvement programs and for economic development. The initial period of such support will be seven years, as provided in Section 702.

Seven year grant assistance, appropriation authorization.

"SECTION 702. Approval of this Covenant by the United States will constitute a commitment and pledge of the full faith and credit of the United States for the payment, as well as an authorization for the appropriation, of the following guaranteed annual levels of direct grant assistance to the Government of the Northern Mariana Islands for each of the seven fiscal years following the effective date of this Section:

"(a) $8.25 million for budgetary support for government operations, of which $250,000 each year will be reserved for a special education training fund connected with the change in the political status of the Northern Mariana Islands;

"(b) $4 million for capital improvement projects, of which $500,000 each year will be reserved for such projects on the Island of Tinian and $500,000 each year will be reserved for such projects on the Island of Rota; and

"(c) $1.75 million for an economic development loan fund, of which $500,000 each year will be reserved for small loans to farmers and fishermen and to agricultural and marine cooperatives, and of which $250,000 each year will be reserved for a special program of low interest housing loans for low income families.

Federal programs and services availability.

"SECTION 703. (a) The United States will make available to the Northern Mariana Islands the full range of federal programs and services available to the territories of the United States. Funds provided under Section 702 will be considered to be local revenues of the Government of the Northern Mariana Islands when used as the local share required to obtain federal programs and services.

"(b) There will be paid into the Treasury of the Government of the Northern Mariana Islands, to be expended to the benefit of the people thereof as that Government may by law prescribe, the proceeds of all customs duties and federal income taxes derived from the Northern Mariana Islands, the proceeds of all taxes collected under the internal revenue laws of the United States on articles produced in the Northern Mariana Islands and transported to the United States, its territories or possessions, or consumed in the Northern Mariana Islands, the proceeds of any other taxes which may be levied by the Congress on the inhabitants of the Northern Mariana Islands, and all quarantine, passport, immigration and naturalization fees collected in the Northern Mariana Islands, except that nothing in this Section shall be construed to apply to any tax imposed by Chapters 2 or 21 of Title 26, United States Code.

26 USC 1401, 3101.

"SECTION 704. (a) Funds provided under Section 702 not obligated or expended by the Government of the Northern Mariana Islands

during any fiscal year will remain available for obligation or expenditure by that Government in subsequent fiscal years for the purposes for which the funds were appropriated.

"(b) Approval of this Covenant by the United States will constitute an authorization for the appropriation of a pro-rata share of the funds provided under Section 702 for the period between the effective date of this Section and the beginning of the next succeeding fiscal year. Pro-rata share, appropriation authorization.

"(c) The amounts stated in Section 702 will be adjusted for each fiscal year by a percentage which will be the same as the percentage change in the United States Department of Commerce composite price index using the beginning of Fiscal Year 1975 as the base.

"(d) Upon expiration of the seven year period of guaranteed annual direct grant assistance provided by Section 702, the annual level of payments in each category listed in Section 702 will continue until Congress appropriates a different amount or otherwise provides by law.

"ARTICLE VIII

"PROPERTY

"SECTION 801. All right, title and interest of the Government of the Trust Territory of the Pacific Islands in and to real property in the Northern Mariana Islands on the date of the signing of this Covenant or thereafter acquired in any manner whatsoever will, no later than upon the termination of the Trusteeship Agreement, be transferred to the Government of the Northern Mariana Islands. All right, title and interest of the Government of the Trust Territory of the Pacific Islands in and to all personal property on the date of the signing of this Covenant or thereafter acquired in any manner whatsoever will, no later than upon the termination of the Trusteeship Agreement, be distributed equitably in a manner to be determined by the Government of the Trust Territory of the Pacific Islands in consultation with those concerned, including the Government of the Northern Mariana Islands.

"SECTION 802. (a) The following property will be made available to the Government of the United States by lease to enable it to carry out its defense responsibilities: Leased property, U.S. defense purposes.

"(1) on Tinian Island, approximately 17,799 acres (7,203 hectares) and the waters immediately adjacent thereto;

"(2) on Saipan Island, approximately 177 acres (72 hectares) at Tanapag Harbor; and

"(3) on Farallon de Medinilla Island, approximately 206 acres (83 hectares) encompassing the entire island, and the waters immediately adjacent thereto.

"(b) The United States affirms that it has no present need for or present intention to acquire any greater interest in property listed above than that which is granted to it under Subsection 803(a), or to acquire any property in addition to that listed in Subsection (a), above, in order to carry out its defense responsibilities.

"SECTION 803. (a) The Government of the Northern Mariana Islands will lease the property described in Subsection 802(a) to the Government of the United States for a term of fifty years, and the Government of the United States will have the option of renewing this lease for all or part of such property for an additional term of fifty years if it so desires at the end of the first term.

"(b) The Government of the United States will pay to the Government of the Northern Mariana Islands in full settlement of this lease, including the second fifty year term of the lease if extended under the renewal option, the total sum of $19,520,600, determined as follows:

"(1) for that property on Tinian Island, $17.5 million;

"(2) for that property at Tanapag Harbor on Saipan Island, $2 million; and

"(3) for that property known as Farallon de Medinilla, $20,600.

The sum stated in this Subsection will be adjusted by a percentage which will be the same as the percentage change in the United States Department of Commerce composite price index from the date of signing the Covenant.

Technical Agreement Regarding Use of Land To Be Leased by the U.S.

"(c) A separate Technical Agreement Regarding Use of Land To Be Leased by the United States in the Northern Mariana Islands will be executed simultaneously with this Covenant. The terms of the lease to the United States will be in accordance with this Section and with the terms of the Technical Agreement. The Technical Agreement will also contain terms relating to the leaseback of property, to the joint use arrangements for San Jose Harbor and West Field on Tinian Island, and to the principles which will govern the social structure relations between the United States military and the Northern Mariana Islands civil authorities.

"(d) From the property to be leased to it in accordance with this Covenant the Government of the United States will lease back to the Government of the Northern Mariana Islands, in accordance with the Technical Agreement, for the sum of one dollar per acre per year, approximately 6,458 acres (2,614 hectares) on Tinian Island and approximately 44 acres (18 hectares) at Tanapag Harbor on Saipan Island, which will be used for purposes compatible with their intended military use.

"(e) From the property to be leased to it at Tanapag Harbor on Saipan Island the Government of the United States will make available to the Government of the Northern Mariana Islands 133 acres (54 hectares) at no cost. This property will be set aside for public use as an American memorial park to honor the American and Marianas dead in the World War II Marianas Campaign. The $2 million received from the Government of the United States for the lease of this property will be placed into a trust fund, and used for the development and maintenance of the park in accordance with the Technical Agreement.

"SECTION 804. (a) The Government of the United States will cause all agreements between it and the Government of the Trust Territory of the Pacific Islands which grant to the Government of the United States use or other rights in real property in the Northern Mariana Islands to be terminated upon or before the effective date of the Section. All right, title and interest of the Government of the Trust Territory of the Pacific Islands in and to any real property with respect to which the Government of the United States enjoys such use or other rights will be transferred to the Government of the Northern Mariana Islands at the time of such termination. From the time such right, title and interest is so transferred the Government of the Northern Mariana Islands will assure the Government of the United States the continued use of the real property then actively used by the Government of the United States for civilian governmental purposes on terms comparable to those enjoyed by the Government of the United

States under its arrangements with the Government of the Trust Territory of the Pacific Islands on the date of the signature of this Covenant.

"(b) All facilities at Isely Field developed with federal aid and all facilities at that field usable for the landing and take-off of aircraft will be available to the United States for use by military and naval aircraft, in common with other aircraft, at all times without charge, except, if the use by military and naval aircraft shall be substantial, a reasonable share, proportional to such use, of the cost of operating and maintaining the facilities so used may be charged at a rate established by agreement between the Government of the Northern Mariana Islands and the Government of the United States. Isely Field facilities, availability to U.S.

"SECTION 805. Except as otherwise provided in this Article, and notwithstanding the other provisions of this Covenant, or those provisions of the Constitution, treaties or laws of the United States applicable to the Northern Mariana Islands, the Government of the Northern Mariana Islands, in view of the importance of the ownership of land for the culture and traditions of the people of the Northern Mariana Islands, and in order to protect them against exploitation and to promote their economic advancement and self-sufficiency: Landholding restrictions.

"(a) will until twenty-five years after the termination of the Trusteeship Agreement, and may thereafter, regulate the alienation of permanent and long-term interests in real property so as to restrict the acquisition of such interests to persons of Northern Mariana Islands descent; and

"(b) may regulate the extent to which a person may own or hold land which is now public land.

"SECTION 806. (a) The United States will continue to recognize and respect the scarcity and special importance of land in the Northern Mariana Islands. If the United States must acquire any interest in real property not transferred to it under this Covenant, it will follow the policy of seeking to acquire only the minimum area necessary to accomplish the public purpose for which the real property is required, of seeking only the minimum interest in real property necessary to support such public purpose, acquiring title only if the public purpose cannot be accomplished if a lesser interest is obtained, and of seeking first to satisfy its requirement by acquiring an interest in public rather than private real property.

"(b) The United States may, upon prior written notice to the Government of the Northern Mariana Islands, acquire for public purposes in accordance with federal laws and procedures any interest in real property in the Northern Mariana Islands by purchase, lease, exchange, gift or otherwise under such terms and conditions as may be negotiated by the parties. The United States will in all cases attempt to acquire any interest in real property for public purposes by voluntary means under this Subsection before exercising the power of eminent domain. No interest in real property will be acquired unless duly authorized by the Congress of the United States and appropriations are available therefor.

"(c) In the event it is not possible for the United States to obtain an interest in real property for public purposes by voluntary means, it may exercise within the Commonwealth the power of eminent domain to the same extent and in the same manner as it has and can exercise the power of eminent domain in a State of the Union. The power of eminent domain will be exercised within the Commonwealth only to the extent necessary and in compliance with applicable United States laws, and with full recognition of the due process required by the United States Constitution. Power of eminent domain.

USC prec. title 1.

"ARTICLE IX

"NORTHERN MARIANA ISLANDS REPRESENTATIVE AND CONSULTATION

"SECTION 901. The Constitution or laws of the Northern Mariana Islands may provide for the appointment or election of a Resident Representative to the United States, whose term of office will be two years, unless otherwise determined by local law, and who will be entitled to receive official recognition as such Representative by all of the departments and agencies of the Government of the United States upon presentation through the Department of State of a certificate of selection from the Governor. The Represenative must be a citizen and resident of the Northern Mariana Islands, at least twenty-five years of age, and, after termination of the Trusteeship Agreement, a citizen of the United States.

"SECTION 902. The Government of the United States and the Government of the Northern Mariana Islands will consult regularly on all matters affecting the relationship between them. At the request of either Government, and not less frequently than every ten years, the President of the United States and the Governor of the Northern Mariana Islands will designate special representatives to meet and to consider in good faith such issues affecting the relationship between the Northern Mariana Islands and the United States as may be designated by either Government and to make a report and recommendations with respect thereto. Special representatives will be appointed in any event to consider and to make recommendations regarding future multi-year financial assistance to the Northern Mariana Islands pursuant to Section 701, to meet at least one year prior to the expiration of every period of such financial assistance.

Special representatives, report.

"SECTION 903. Nothing herein shall prevent the presentation of cases or controversies arising under this Covenant to courts established by the Constitution or laws of the United States. It is intended that any such cases or controversies will be justiciable in such courts and that the undertakings by the Government of the United States and by the Government of the Northern Mariana Islands provided for in this Covenant will be enforceable in such courts.

"SECTION 904. (a) The Government of the United States will give sympathetic consideration to the views of the Government of the Northern Mariana Islands on international matters directly affecting the Northern Mariana Islands and will provide opportunities for the effective presentation of such views to no less extent than such opportunities are provided to any other territory or possession under comparable circumstances.

"(b) The United States will assist and facilitate the establishment by the Northern Mariana Islands of offices in the United States and abroad to promote local tourism and other economic or cultural interests of the Northern Mariana Islands.

Promotion of local tourism.

"(c) On its request the Northern Mariana Islands may participate in regional and other international organizations concerned with social, economic, educational, scientific, technical and cultural matters when similar participation is authorized for any other territory or possession of the United States under comparable circumstances.

"ARTICLE X

"APPROVAL, EFFECTIVE DATES, AND DEFINITIONS

"SECTION 1001. (a) This Covenant will be submitted to the Mariana Islands District Legislature for its approval. After its approval by the Mariana Islands District Legislature, this Covenant will be submitted to the people of the Northern Mariana Islands for approval in a plebiscite to be called by the United States. Only persons who are domiciled exclusively in the Northern Mariana Islands and who meet such other qualifications, including timely registration, as are promulgated by the United States as administering authority will be eligible to vote in the plebiscite. Approval must be by a majority of at least 55% of the valid votes cast in the plebiscite. The results of the plebiscite will be certified to the President of the United States.

Covenant approval by U.S.

"(b) This Covenant will be approved by the United States in accordance with its constitutional processes and will thereupon become law.

Trusteeship Agreement termination; establishment of Commonwealth, proclamation.

"SECTION 1002. The President of the United States will issue a proclamation announcing the termination of the Trusteeship Agreement, or the date on which the Trusteeship Agreement will terminate, and the establishment of the Commonwealth in accordance with this Covenant. Any determination by the President that the Trusteeship Agreement has been terminated or will be terminated on a day certain will be final and will not be subject to review by any authority, judicial or otherwise, of the Trust Territory of the Pacific Islands, the Northern Mariana Islands or the United States.

Effective dates.

"SECTION 1003. The provisions of this Covenant will become effective as follows, unless otherwise specifically provided:

"(a) Sections 105, 201–203, 503, 504, 606, 801, 903 and Article X will become effective on approval of this Covenant;

"(b) Sections 102, 103, 204, 304, Article IV, Sections 501, 502, 505, 601–605, 607, Article VII, Sections 802–805, 901 and 902 will become effective on a date to be determined and proclaimed by the President of the United States which will be not more than 180 days after this Covenant and the Constitution of the Northern Mariana Islands have both been approved; and

"(c) The remainder of this Covenant will become effective upon the termination of the Trusteeship Agreement and the establishment of the Commonwealth of the Northern Mariana Islands.

"SECTION 1004. (a) The application of any provision of the Constitution or laws of the United States which would otherwise apply to the Northern Mariana Islands may be suspended until termination of the Trusteeship Agreement if the President finds and declares that the application of such provision prior to termination would be inconsistent with the Trusteeship Agreement.

Constitution of the Northern Mariana Islands, effective date.

"(b) The Constitution of the Northern Mariana Islands will become effective in accordance with its terms on the same day that the provisions of this Covenant specified in Subsection 1003(b) become effective, provided that if the President finds and declares that the effectiveness of any provision of the Constitution of the Northern Mariana Islands prior to termination of the Trusteeship Agreement would be inconsistent with the Trusteeship Agreement such provision will be ineffec-

tive until termination of the Trusteeship Agreement. Upon the establishment of the Commonwealth of the Northern Mariana Islands the Constitution will become effective in its entirety in accordance with its terms as the Constitution of the Commonwealth of the Northern Mariana Islands.

Definitions.

"SECTION 1005. As used in this Covenant:

"(a) 'Trusteeship Agreement' means the Trusteeship Agreement for the former Japanese Mandated Islands concluded between the Security Council of the United Nations and the United States of America, which entered into force on July 18, 1947;

"(b) 'Northern Mariana Islands' means the area now known as the Mariana Islands District of the Trust Territory of the Pacific Islands, which lies within the area north of 14° north latitude, south of 21° north latitude, west of 150° east longitude and east of 144° east longitude;

"(c) 'Government of the Northern Mariana Islands' includes, as appropriate, the Government of the Mariana Islands District of the Trust Territory of the Pacific Islands at the time this Covenant is signed, its agencies and instrumentalities, and its successors, including the Government of the Commonwealth of the Northern Mariana Islands;

"(d) 'Territory or possession' with respect to the United States includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and American Samoa;

"(e) 'Domicile' means that place where a person maintains a residence with the intention of continuing such residence for an unlimited or indefinite period, and to which such person has the intention of returning whenever he is absent, even for an extended period.

"Signed at Saipan, Mariana Islands on the fifteenth day of February, 1975.

"For the people of the Northern Mariana Islands:

EDWARD DLG. PANGELINAN,
Chairman, Marianas
Political Status Commission.
VICENTE N. SANTOS.
Vice Chairman, Marianas
Political Status Commission.

"For the United States of America:

Ambassador F. HAYDN WILLIAMS,
Personal Representative of the
President of the United States.

"Members of the Marianas Political Status Commission:

JUAN LG. CABRERA.
VICENTE T. CAMACHO.
JOSE R. CRUZ.
BERNARD V. HOFSCHNEIDER.
BENJAMIN T. MANGLONA.
DANIEL T. MUNA.
Dr. FRANCISCO T. PALACIOS.
JOAQUIN I. PANGELINAN.
MANUEL A. SABLAN.
JOANNES B. TAIMANAO.
PEDRO A. TENORIO."

SEC. 2. It is the sense of the Congress that pursuant to section 902 of the foregoing Covenant, and in any case within ten years from the date of the enactment of this resolution, the President of the United States should request, on behalf of the United States, the designation of special representatives to meet and to consider in good faith such issues affecting the relationship between the Northern Mariana Islands and the United States as may be designated by either Government and to make a report and recommendations with respect thereto.

Special representatives, appointment by President, report to Congress. 48 USC 1681 note.

Approved March 24, 1976.

LEGISLATIVE HISTORY:

HOUSE REPORT No. 94-364 (Comm. on Interior and Insular Affairs).
SENATE REPORTS: No. 94-433 (Comm. on Interior and Insular Affairs) and No. 94-596 (Committees on Foreign Relations and Armed Services).
CONGRESSIONAL RECORD:
Vol. 121 (1975): July 21, considered and passed House.
Vol. 122 (1976): Feb. 24, considered and passed Senate, amended.
Mar. 11, House concurred in Senate amendments.
WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS:
Vol. 12, No. 13 (1976): Mar. 24, Presidential statement.

LIST OF DRAFT
STAFF RECOMMENDATIONS
CIRCULATED FOR COMMENT

Draft staff recommendations considered by Commission for inclusion in Commission's first Interim Report to the Congress of the United States. (January 1982).

The Federal Tort Claims Act (see Public Law 97-357, § 204, 96 Stat. 1705 (1982)).

Extending Certain Rights of United States Citizenship to Citizens of the Northern Mariana Islands (see Public Law 98-213, §§ 17-25, 97 Stat. 1459 (1983); Public Law 98-94, §1006, 97 Stat. 628 (1983); Presidential Proclamation 5207, 49 Fed. Reg. 24365 (1984); Presidential Proclamation 4938, 47 Fed. Reg. 19307 (1982)):

Part I. Federal Employment.

Part II. The Uniformed Services.

Part III. Protection and Services in Foreign Countries.

Part V. Political and Civil Rights.

Part VI. Federal Programs and Benefits.

Part VII. Appointment to High Office (not included in Interim Report).

Part VIII. Statutory Construction.

The Clean Air Act (see Public Law 98-213, § 11, 97 Stat. 1459 (1983)).

Draft staff recommendations considered by Commission for inclusion in this report:

The Federal Bankruptcy Laws (adopted; see Public Law 98-353, §§ 101(a), 421(j)(7), 98 Stat. 333 (1984)).

Government Depository Libraries (adopted).

Nominations to the United States Military Academy, the United States Naval Academy, and the United States Air Force Academy (adopted).

Allowing Foreign Air Carriers to Transport Passengers and their Luggage between the Northern Mariana Islands and Guam (original and revised versions) (not adopted).

Creation of a Special United States Passport for Citizens of the Northern Mariana Islands (adopted).

The Federal Intellectual Property Laws (adopted).

Land Grant Colleges (adopted).

Major Aquatic Permit Programs (adopted only with respect to Rivers and Harbors Act).

The Fishery Conservation and Management Act and the Vessel Documentation Act (original and separate revised versions with respect to each Act). (The revised staff recommendation on the Fishery Conservation and Management Act was adopted with changes. A second revised staff recommendation on the vessel documentation and vessel crewing laws is listed below.)

The Higher Education Act (adopted with changes).

Federal Crimes (adopted).

The Federal Immigration and Nationality Laws (adopted with changes).

The Wagner-Peyser Act, Establishing the United States Employment Service (adopted with changes).

The Federal Banking Laws and Related Federal Housing Laws (adopted).

A Nonvoting Delegate to the United States House of Representatives (original and revised versions) (revised version adopted with changes).

The Securities Act of 1933 and the Securities Exchange Act of 1934 (adopted).

Title 5 of the United States Code, Government Organization and Employees (adopted).

Federal Contract Laws (adopted with changes).

Federal Postal Laws (adopted with changes).

Medicaid (original and alternate versions) (original version adopted with changes).

Enforcement of Federal Laws in the Northern Mariana Islands (adopted with changes).

Submerged Lands (adopted).

Title 31 of the United States Code, Money and Finance (adopted).

Ocean Surveillance (adopted).

Tuna Fisheries (adopted with changes).

Title 15 of the United States Code, Commerce and Trade (adopted).

Draft staff recommendations not acted on by Commission:

Vessel Documentation and Vessel Crewing Laws (second revised version).

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Title 19 of the United States Code, Customs Duties.

* * *

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- The Covenant.
  - --Negotiating and Legislative History.
- The Constitution of the Northern Mariana Islands.
- The Economy.
- Education
- Geography.
- Geology.
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STAFF

OF

THE NORTHERN MARIANA ISLANDS COMMISSION ON FEDERAL LAWS

Daniel H. MacMeekin
Executive Director

John A. Cutler
Staff Counsel

Dianne L. Brickey
Secretary to the Executive Director
and Word Processing Specialist

Michelle Monroe
Secretary

* * *

The following persons also served on the Commission's staff during the periods indicated:

Jose S. Dela Cruz, Northern Mariana Islands Liaison Attorney, January 1981-May 1983

Jeffrey V. Nackley, Attorney, May 1982-August 1983

Trevor A. Haydon, Special Assistant, September-November 1982

Guadelupe Flores, Secretary, Northern Mariana Islands Office, June-August 1981

Antonia Mafnas, Secretary, Northern Mariana Islands Office, October-December 1981

Hermana Gridley, Secretary, Northern Mariana Islands Office, February-June 1982

Lillian Villagomez, Secretary, Northern Mariana Islands Office, June 1982-May 1983

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